

**CALIFORNIA COASTAL COMMISSION**

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# Item Th 13

**Staff:** AM-SF  
**Staff Report:** April 29, 2004  
**Hearing Date:** May 13, 2004

## STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST ORDER

<b>CEASE AND DESIST ORDER:</b>	CCC-04-CD-04
<b>RELATED VIOLATION FILE:</b>	V-4-03-028
<b>PROPERTY LOCATION:</b>	Seaward side of Old Rincon Highway 1 (Old PCH) between 3560 and 3674 West Pacific Coast Highway (APN 060-0-380-245), Ventura County.
<b>DESCRIPTION OF PROPERTY</b>	An approximately 500 linear foot strip of open coastline between Old Rincon Highway 1 (OLD PCH) and the beach (Mondo's Cove), south of Pitas Point and North of Solimar Beach, in the Faria Beach Community.
<b>ENTITY WHO UNDERTOOK DEVELOPMENT AND IS SUBJECT TO THIS ORDER:</b>	Faria Beach Homeowners Association
<b>VIOLATION DESCRIPTION:</b>	Unpermitted placement of "private property" and security signs, fencing, boulders ranging in size between one to five feet in diameter, mulch, topsoil, and landscaping (including non-native and possibly invasive plants and trees) along the road shoulder adjacent to Old Rincon Highway and on top of existing revetment, and plastic drainage pipes on and through the revetment directly above the beach (Mondo's Cove), which impedes public access to Mondo's Cove.

- SUBSTANTIVE FILE DOCUMENTS:**
1. Background Exhibits 1-19
  2. Ventura County certified Local Coastal Program
  3. Executive Director Cease and Desist Order No. ED-04-CD-01
  4. Ventura County Beach Study, State of California, Department of Parks and Recreation, June 1978

**CEQA STATUS:** Exempt (CEQA Guidelines (CG) §§ 15061(b)(1) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321)

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## **I. SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve a Cease and Desist Order (as described below) to address unpermitted development including the placement of “private property” and security signs, fencing, boulders, landscaping (with associated grading), and drainage devices located on a strip of land between Old Rincon Highway 1 (“Old PCH”)<sup>1</sup> and Mondo’s Cove, a popular beach area in Ventura County (Exhibit #1). The unpermitted development was placed in this location by the Faria Beach Homeowner’s Association (“FBHOA”). The unpermitted development activity that has occurred on the subject property meets the definition of “development” set forth in Section 30106 of the Coastal Act. The strip of land that separates Old PCH from Mondo’s Cove has historically been and continues to be used as a public access point for beachgoers. Beachgoers park in a vacant railroad right-of-way located on the inland side of Old PCH, cross Old PCH and the subject property, and walk down the existing rock revetment (placed by the California Department of Transportation (“CalTrans”)) to the beach (Exhibit #2). The unpermitted development impedes passage across the strip of land, blocks public access to the beach, and the unpermitted signs are both misleading and discourage public access.

On February 26, 2004, pursuant to Section 30809 of the Coastal Act, the Executive Director of the Coastal Commission issued Executive Director Cease and Desist Order No ED-04-CD-01 (“EDCDO”) to resolve this violation. The FBHOA was required, among other things, to remove all unpermitted development by March 5, 2004. The FBHOA has not removed the unpermitted development as required by the EDCDO.

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<sup>1</sup> Old Rincon Highway or Old PCH used to be the only coastal route along this stretch of Coast prior to the construction of U.S. Highway 101. Old PCH is a 2-lane highway with a center turn lane. The public utilizes an open area in a railroad right-of-way for parking, crosses Old PCH, and walks down the rock revetment to access the beach at Mondo’s Cove.

Therefore, the Executive Director sent a Notice of Intent to commence these proceedings.

Some or all of the beach area seaward of the rock revetment placed by CalTrans includes tidelands owned by the State, which the public has the right to use under State law.<sup>2</sup> Tidelands include, “those lands lying between the lines of mean high tide and mean low tide which are covered and uncovered successively by the ebb and flow thereof.”<sup>3</sup> The FBHOA owns a small strip of land between Old PCH and the ambulatory Mean High Tide Line (“MHTL”).<sup>4</sup> The unpermitted development that is the subject of this Cease and Desist Order is located on the thin strip of land between Old PCH and the revetment and beach. This development was placed in this location without benefit of a Coastal Development Permit, in violation of the Ventura County certified LCP and the Coastal Act. In addition, it appears that the public has historically used and continues to use this site to reach the beach and ocean at Mondo’s Cove.

Mondo’s Cove is a very popular recreational beach in Ventura County. All lands seaward of the MHTL are State Lands and is public land under California Law. The revetment located seaward of Old PCH serves as a protective device to lessen the impact that wave run-up may have on the highway (Exhibits #19 & #20). On most days, especially during winter and spring months at higher tides, ocean waves break up against the rock revetment. The sea appears to extend in close proximity to the revetment<sup>5</sup>, and therefore, under California Law, all land seaward of the MHTL is public land.

Surfers, kayakers, scuba divers, swimmers, and beach goers alike enjoy the public beach and ocean in this location. Recent photographs demonstrate that hundreds of beachgoers come to Mondo’s Cove on summer weekends. Commission staff has observed surfers and beachgoers using this area even during cooler winter weekdays.

The public also has used “steps”, which were grouted into the existing revetment at the south end of the property, enabling easier ascent and descent of the rock revetment. Walking down the “steps” or crossing the rock revetment across the subject property is the only access point to this stretch of coastline. The nearest public access point from this location is approximately ½ mile away. However, even if one used these access points, they would not always be able to reach Mondo’s Cove as the high water line rises to the seaward extent of the homes in the Faria Beach Community, upcoast and downcoast from the subject property.

Placing any structures between the rock revetment and Old PCH would prohibit the public from enjoying this beach and surfing location as they have done for years. The

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<sup>2</sup> At times, the MHTL extends landward (or above the toe of) the existing revetment.

<sup>3</sup> *Lechuza Villas West v. CA Coastal Commission* (1997) 60 Cal.App.4<sup>th</sup> 218, 235.

<sup>4</sup> The CA Department of Transportation may have an easement over some or all of the property in the area of the existing rock revetment

<sup>5</sup> See, Footnote 2, Supra.

protection of coastal access and recreation are one of the major policy goals of the Coastal Act (Sections 30210, 30211, 30213, 30220, 30221, 30222, and 30240 of the Coastal Act), as incorporated in the County's Local Coastal Program ("LCP") (See Section B.3., below. This unpermitted development impedes access across the rock revetment, which impacts coastal access to and recreational uses of this beach. There is evidence that the public has used the subject property as a public accessway to Mondo's Cove since at least the 1960's.<sup>6</sup> Moreover, as noted above, the development was undertaken without a Coastal Development Permit, which is a violation of the County LCP and the Coastal Act.

The unpermitted development includes "private property" signs (Exhibit #13). The text on these signs reads:

*NOTICE This is not public property. It is owned by the families of the Faria Beach Colony. We appreciate your cooperation in obeying the restrictions. It is a misdemeanor to operate any commercial business, including but not limited to, surf schools, camps, recreational/outdoor sporting events, including surf contests – Ventura County Coastal Zoning Ordinance Div 8, Ch 1.1, Art. 3, 4, 13. Operation of any such commercial business is also trespassing, trespassing may be subject to criminal and/or civil prosecution and related penalties and damages. No jet skis – No fires – Keep dogs on a leash. Please take your garbage with you. We do not have refuse collection service. Faria Beach Homeowners Association. Right to pass by permission and subject to control of owner: CA Civil code 1008.*

Although the signs are placed on the thin strip of land apparently owned by the FBHOA, they do not identify the private property as that thin strip. They appear to (especially since the text refers to "allowable" activities on the beach) refer to the beach area seaward of the signs and give the clear impression that they also refer to the beach, itself. As noted above, the beach here is most if not all in public trust. In addition, as noted above, the signs are also unpermitted.

In order to issue a Cease and Desist Order under Section 30810 of the Coastal Act, the Commission must find that the activity that is the subject of the order has occurred either without a required coastal development permit (CDP) or in violation of a previously granted CDP. The FBHOA did not obtain a Coastal Development Permit prior to undertaking the development listed above. Commission staff had advised FBHOA on several occasions before and during construction activities that a CDP was required for all the development.

In addition, while it is not a necessary finding for the Commission to make to issue a Cease and Desist Order, the unpermitted development is also inconsistent with Ventura

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<sup>6</sup> Commission staff evidence of this historic use comes from conversations with members of the public who frequent this area and photographs taken by Commission staff and photographs submitted by the public to the Commission.

County certified Local Coastal Program (“LCP”) and the Chapter 3 Policies of the Coastal Act (as incorporated by the Ventura County LCP).

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed Cease and Desist Order are set forth in section 13185 of the Commission’s regulations. For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13185 and 13186, incorporating by reference section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

## **III. STAFF RECOMMENDATION**

Staff recommends that the Commission adopt the following motion:

### **Motion:**

***I move that the Commission issue Cease and Desist Order No. CCC-04-CD-04 pursuant to the staff recommendation.***

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

**Resolution to Issue Cease and Desist Order:**

The Commission hereby issues Cease and Desist Order number CCC-04-CD-04, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

**IV. RECOMMENDED FINDINGS FOR CEASE AND DESIST ORDER  
CCC-04-CD-04**

Staff recommends the Commission adopt the following findings of fact in support of its action.

**A. History of Violation**

**1. Initial Complaint**

On March 21, 2003, the Commission received a letter alleging that signs were installed at Faria Beach in the Mondo's Cove area<sup>7</sup> (Exhibit #5). Commission staff has confirmed, through comparing historic photographs of the site, that the signs were not present in 1973 nor were they present in 1981, 1982, or 1983, and therefore require a CDP (Exhibit #19 & #20). The placement of new signs (or the "substantial change" of previously existing signs that were constructed prior to the California Coastal Zone Conservation Act (Prop 20)) constitutes development under 30106 of the Coastal Act (as incorporated in the County Local Coastal Program) that requires a CDP and is not exempt under the provisions of the LCP. On June 5 and June 27, 2003, Commission staff received reports that a surfer was cited for trespassing when he walked over the revetment to get to the beach. The District Attorney's office and Sheriff's Department later dismissed the charges.

On October 9, 2003, the Commission South Central Coast District enforcement officer visited the site and found that new boulders were placed and topsoil stockpiled on and above the existing rock revetment (Exhibit #16 & #17). At this time, Commission staff told the contractor conducting the unpermitted work to stop. The contractor agreed to stop work. Commission staff later confirmed that a CDP had not been issued for the development from either the Commission or Ventura County. Staff noted that some of the boulders appeared to be placed as borders for a "planter" structure (Exhibit #18).

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<sup>7</sup> Signs have changed location and wording since approximately 1986, when they were first observed in historic photographs (Exhibit #12 & #13).

The contractor conducting the development told Commission staff that Dr. Roger Haring of the Homeowners Association hired him to undertake the development.

Commission staff then contacted Dr. Haring (later in the day on October 9) and advised Dr. Haring that the development undertaken required a CDP. Dr. Haring stated that the development was intended to make the site more visually attractive and it was not meant to impede public access. In addition, he stated that the work was experimental and the Home Owners Association was going to observe the development over the winter storm period to see if the landscaping and boulders would wash away. Dr. Haring then asked Commission staff if he could finish the landscaping. Commission staff stated that no development could be authorized without a CDP and again advised Dr. Haring that the development required a CDP.

On October 16, 2003, Commission staff met with Dr. Haring and explained to him that he needed to obtain a CDP from Ventura County (as the unpermitted development was located in Ventura County's permitting jurisdiction) and further advised him that the Commission would likely appeal any CDP for a project approved by Ventura County that negatively affected public access to Mondo's cove since the protection of public access and recreation is a major policy goal of the Coastal Act.<sup>8</sup> Dr. Haring again asked if he could complete the work. Commission staff advised Dr. Haring that such development required a CDP and staff could not informally give permission to continue the development without the required application and analysis upon which permitting decisions are made. Staff also stated that the placement of signs, boulders, topsoil, landscaping, and drainage devices in the absence of a permit were constructed in violation of the Coastal Act.

In a conversation on November 12, 2003, Dr. Haring stated that he spoke with the County of Ventura who allegedly told him that the County does not require permits for the work completed at Mondo's, which at this time included the placement of boulders, topsoil, signs, and landscaping. The County's opinion was allegedly based on a sketch of the project, which was faxed to the County by Dr. Haring. In addition, Dr. Haring stated that the FBHOA intended to also plant approximately 3-foot high shrubs and ice plant (an invasive plant species).

On January 16, 2004, Commission staff received a report and photographs showing that new fencing had been erected (in approximately December 2003) on the downcoast end of Mondo's Cove directly upcoast of a private residence. This fencing

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<sup>8</sup> After certification of local coastal programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, in a 'sensitive coastal resource area' or located within 100 feet of any wetland, estuary, or stream.

was placed along the road shoulder above the revetment for approximately 20 feet and blocked public access across the grouted “steps” and also portions of the beach accessed over the revetment (as discussed in Section I., above) (Exhibit #15). On January 30, 2004, Commission staff received an additional report with photographic evidence that more fencing was erected between January 29 and January 30, 2004, on the upcoast end of Mondo’s Cove (Exhibit #14). The fencing covers a distance of approximately 75 feet and completely blocks public access across this area to the beach.

On January 20, 2004, Commission staff sent the Ventura County Planning Department a letter describing the unpermitted development and asking the County if it intended to take action to address the violations of the certified LCP at Mondo’s Cove. This letter explained to the County that if the County is unable to take action to enforce the provisions of the LCP or if the County fails to take sufficient action to resolve the violations, the Commission would take responsibility for enforcement of the LCP (pursuant to section 30809(a)(2) and 30810(a)(2) of the Coastal Act). The letter requested the County to respond by January 23, 2004, if it planned to take action rather than the Commission. The County did not respond to this January 20<sup>th</sup> letter.

On February 2, 2004, Commission staff contacted Christopher Stevens, Ventura County Planning Director, asking the County 1) whether they were going to take enforcement action, and 2) whether the County had issued any permits or permit exemptions for the development at Mondo’s Cove.

On February 3, 2004, Mr. Stevens left a voicemail message for Commission staff stating that 1) the County was declining to take enforcement action regarding the unpermitted development; 2) the County had not granted any permits, permit exemptions, or take any action whatsoever regarding the unpermitted development; 3) prior to the January 20<sup>th</sup> letter, the County Planning Department was not aware that development had occurred at Mondo’s cove; and 4) after reviewing the development “after-the-fact”, the County did not find anything in the LCP that would indicate the work was a violation. In a February 5, 2004 letter, Commission staff confirmed that the County was declining to take enforcement action regarding the development at Mondo’s Cove (Exhibit #23). Although the County indicated that, based on the project description provided by the FBHOA, its opinion was that no CDP was required; upon investigation into the LCP Commission staff determined that is not the case. Commission staff determined that no policies or standards in the LCP exempt such development from the permitting process and the County’s LCP does not authorize the development at Mondo’s Cove to proceed without a CDP from the County of Ventura (See pgs.12-13 for details of Ventura County LCP as it pertains to this development).

The placement of fencing, “private property” and security signs, stockpiled material, boulders, drainage devices, and landscaping on the subject property constitute development, which requires a CDP. On October 9 and 16 and November 12, 2003, Commission staff advised the Faria Beach Homeowners Association that the



unpermitted development required a CDP. Work continued after FBHOA had been informed of the necessity for a CDP by the Commission staff; and therefore placement of the unpermitted development is a knowing and intentional violation of the permit requirements of the Coastal Act and the Ventura County LCP.

## **2. EDCDO**

On February 13, the Executive Director of the Coastal Commission sent the FBHOA a Notice Prior to Issuance of an Executive Director Cease and Desist Order (EDCDO NOI) (Exhibit #3). Since this development had been discovered before it was completed, in order to prevent additional unpermitted development being done and to resolve the violation as quickly and with as few resources as possible, the Executive Director attempted to resolve the situation via an Executive Director Cease and Desist Order, as provided for in Section 30809 of the Coastal Act. The EDCDO NOI stated, "To prevent the issuance of the Executive Director Cease and Desist Order to you, you must provide assurances by telephone by 5:00 pm, February 17, 2004 and confirmed in writing by 5:00 pm February 18, 2004... and followed by a written confirmation via facsimile...and regular mail... that 1) Faria Beach Homeowners Association will... cease from all such activities and commit to perform no further unpermitted development, 2) that they will... cease from additional maintenance of any unpermitted development, 3) by February 19, 2004, Faria Beach Homeowners Association shall remove unpermitted fencing, and signs, and 4) by February 25, 2004, Faria Beach Homeowners Association shall remove unpermitted boulders, mulch, topsoil, landscaping, and drainage devices from the subject property."

On February 17, 2004, Dr. Haring contacted Commission staff but did not indicate that he or the FBHOA would provide assurances that either party would meet the deadlines provided in the EDCDO NOI. On February 18, Commission staff contacted Dr. Haring and discussed the enforcement action and the EDCDO NOI. Dr. Haring stated that he is the director of the FBHOA and acting as a project manager for the development at Mondo's Cove. He stated that he did not have the authority to remove the development and that he was unable to meet the requirements of the EDCDO NOI at this time because the FBHOA must meet to discuss the issue and decide what action to take. Neither Dr. Haring nor the FBHOA provided assurances by February 17, 2004 that work would stop and unpermitted development would be removed. In addition, neither Dr. Haring nor the FBHOA removed the specified unpermitted development by February 19 and February 25, 2004, respectively.

Therefore, because the FBHOA failed to respond to the NOI in a "satisfactory manner", as defined in Section 30809(b) of the Coastal Act and Section 13180 of the Commission's Regulations, on February 26, 2004, the Executive Director of the Coastal Commission issued Executive Cease and Desist Order No. ED-04-CD-01 (EDCDO) (Exhibit #4).

As of an April 21, 2004 site visit, the unpermitted development, including approximately 95 feet of fencing and “private property” and security signs, was still at the site and continues to impede public access to Mondo’s Cove, in violation of the EDCDO issued on February 26, 2004.

On March 1, 2004, the FBHOA sent a letter to the Ventura County Planning Department stating that the FBHOA was informed by Ron Vogelbaum of the Ventura County Planning Department on or about November 12, 2003, that a Coastal Development Permit was not required for landscaping adjacent to West Pacific Coast Highway at Faria Beach Cove (Exhibit #9). This letter continued by stating, “...we would like to formally apply for a Coastal Development Permit for the landscaping. Please send me the appropriate forms and regulations.”

In a March 3, 2004 conversation, Dr. Haring stated that the Ventura County Planning Department refused to accept a CDP application seeking approval of the development at the site and the County continued to take the position that the development does not require a CDP. Dr. Haring again stated that he did not have the authority from the FBHOA to remove the development but he wanted to resolve the violation without complete removal of the development, as required in the EDCDO. Finally, Dr. Haring stated that the FBHOA has no intent of blocking public access, but does not want unfettered “come as you go” public access across the site to the beach.

Subsequent to this March 3, 2004 conversation with Dr. Haring, Commission staff then had discussions with the Ventura County Planning Department. In this discussion, the County Planning Department stated that the County is willing to accept and process a CDP application for any future proposed development at the site. The FBHOA has yet to submit a CDP application for this development.

FBHOA has not removed the unpermitted development and did not submit the photographic evidence of removal as required by the EDCDO. Therefore, the FBHOA is now both in violation of the Coastal Act and the EDCDO that was issued to them on February 26, 2004.<sup>9</sup> On March 23, 2004, the Executive Director of the Coastal Commission sent the FBHOA and their representatives a letter formally notifying them that the FBHOA is not in conformance with the EDCDO (Exhibit #7).

### **3. Notice of Intent to Commence Cease and Desist Order Proceedings**

Pursuant to Section 13181, Title 14, Division 5.5 of the California Code of Regulations, the Executive Director provided the FBHOA a *Notice of Intent to Commence Cease and Desist Order Proceedings* (NOI) along with the EDCDO.

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<sup>9</sup> Staff notes that Section 30821.6 and Section 30822 of the Coastal Act provides additional remedies, including additional penalties, for failure to comply with Orders issued under Section 30809 of the Coastal Act.

The NOI sent to the FBHOA (for issuance of an Order by the Commission itself, under Section 30810 of the Coastal Act) states:

By this Executive Director Cease and Desist Order, I am also notifying you of my intent to commence proceedings for issuance by the California Coastal Commission of a Cease and Desist Order to direct you to cease and desist from undertaking further development or maintaining existing unpermitted development on the subject property....

**In accordance with Sections 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order proceedings by completing the enclosed Statement of Defense (SOD) form.** The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, no later than March 17, 2004.

On March 16, 2004, Commission staff received a Statement of Defense from the FBHOA in response to the NOI (Exhibit #22). These defenses and Commission staff's response to those defenses are addressed in Section G of this Staff Report.

**C. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of this Cease and Desist Order, includes the placement of fencing, "private property" and security signs, boulders ranging in size between one to five feet in diameter, mulch, topsoil, landscaping (including non-native and potentially invasive plants and trees), and plastic drainage pipes along the road shoulder on the seaward side of Old PCH and on top of existing revetment above the beach.

**D. Basis for Issuance of a Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal, which states, in relevant part:

*(a) If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit ...without first securing the permit or 2) is inconsistent with any permit previously issued... the Commission may issue an order directing that person...to cease and desist. The order may also be issued to enforce requirements of a certified local coastal program... under any of the following circumstances:*

...

*(2) The Commission requests and the local government... declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.*

*(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

The following paragraphs set forth the basis for the issuance of the Cease and Desist Order by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 of the Coastal Act for the Commission to issue a Cease and Desist Order.

### **1. Development Has Occurred without a Coastal Development Permit (“CDP”)**

The development has occurred and continues to remain at the site without the required authorization in a Coastal Development Permit (CDP). Section 30600(a) of the Coastal Act (as incorporated in the County of Ventura’s LCP) states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. Section 30106 of the Coastal Act and Article 2, Section 8172-1 of the Ventura County LCP define “Development” as follows:

*“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The unpermitted development clearly constitutes “development” within the meaning of the above-noted definition and therefore requires a CDP. In addition, unpermitted development impedes public access to Mondo’s Cove in Faria Beach and could cause significant adverse impacts to coastal resources protected under the Coastal Act and the County’s LCP.

### **2. Ventura County LCP**

The unpermitted development at Mondo’s Cove includes placement of “private property” and security signs, fencing, boulders ranging in size between one to five feet in diameter on and above the existing rock revetment, mulch, topsoil, and landscaping (including non-native and potentially invasive plants and trees), and two plastic drainage pipes. These activities are considered development as defined by Section 30106 of the Coastal Act and Section 8172-1 of the Ventura County Coastal Zoning Ordinance (the implementation portion of the County’s LCP).

Section 8174-5 of the County's Coastal Zoning Ordinance lists certain types of development that are exempt from the permit process.<sup>10</sup> The placement of signs, fencing, boulders, landscaping, soil, and drainage structures are not types of development found in this section.

Section 8174-6 of the County's Coastal Zoning Ordinance, classifies fences or walls 6' feet in height or less (except such walls or fences that may block public access to the beach), irrigation lines, and grading less than 50 cubic yards as "Minor Development". The development in this case does not qualify as "minor" under the LCP as it includes fences that may block public access to the beach. Moreover, "minor development" under Section 8174-6 excludes development that is: 1) on or in a beach, tidelands, edge of coastal bluff, riparian area or within 100 feet of such area; 2) on lots between the mean high tide line and the first public road parallel to the sea (or within 300 feet of the mean high tide line where the road is not parallel to the sea); and 3) on lots immediately adjacent to the inland extent of any beach. In general, these are areas considered especially critical and subject to protection; and therefore, Coastal Development Permits are required even for "minor development".

This unpermitted development is located between the mean high tide line and first public road, adjacent to the beach, within 100 feet of tidelands, and includes a fence that may block public access to the beach. In summary, the unpermitted development meets not one but all three of the exceptions to the definition of "minor development". Therefore, the unpermitted development cannot be classified as "minor development" and requires a CDP.

In addition, Section 8174-4, Permitted Uses By Zone, requires a Zoning Clearance for grading of less than 50 cubic yards, a Planned Development Permit for grading 50 cubic yards or more, a Planned Development Permit for the maintenance of shoreline protective devices (see also, Section 8175-5.12 & 8174-8), and a Planned Development Permit for the placement of signs (see also Section 8175-5.13). Planned Development Permits are Discretionary Decisions (Section 8181-3.2). Section 8181-3.5 states that specific factual findings must be made to support the approval of a discretionary permit, including, but not limited to: 1) the proposed development is consistent with the intent and provisions of the County LCP, 2) the proposed development is compatible with the character of the surrounding development, 3) the proposed development would not impair the utility of neighboring property or uses, and 4) the proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare. Since this development was not analyzed through a coastal development permit application as required by the LCP and the Coastal Act, there were no findings made by the County (or the Coastal Commission on appeal, as discussed further, below) that this development meets the four tests noted above. Furthermore, it appears that the

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<sup>10</sup> Exempt development includes the construction of single-family homes on existing, legal lots in designated locations within the Solromar, Silver Strand/Hollywood-by-the-Sea, Hollywood Beach, and North Coast Communities areas.

development, as constructed, fails to meet at least one or more of the required factual findings that must be made to support the approval of a discretionary permit.

Furthermore, Section 8174-3 indicates that discretionary permits may be appealable to the Coastal Commission. Section 8181-9.5 describes which developments are subject to the appeals jurisdiction of the Coastal Commission under Section 30603 of the Coastal Act. Development approved by the County between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greatest distance, is appealable to the Coastal Commission.

Therefore, for the above reasons, the LCP clearly does not authorize the development located at Mondo's Cove to proceed without a Coastal Development Permit from the County of Ventura. Pursuant to Section 30600(a) of the Coastal Act (as incorporated in the County of Ventura's LCP), "development" requires a Coastal Development Permit. In this case, no Coastal Development Permit has been applied for or issued for the subject unpermitted development. The subject unpermitted development is also not exempt from the LCP's or Coastal Act's permitting requirements. In conclusion, the requirement for 30810 of the Coastal Act that the development was undertaken without benefit of a Coastal Development Permit has been met.

### **3. Development is Inconsistent with Resource Policies of the Ventura County LCP and the Chapter 3 Policies of the Coastal Act, as incorporated in the County LCP**

The Commission does not have to find that the unpermitted development is inconsistent with the LCP or the Chapter 3 Policies of the Coastal Act (as incorporated in the LCP) to issue Cease and Desist Orders under the Coastal Act (Section 30810). However, this section is provided as background information. Commission staff notes that the unpermitted development, as constructed, is inconsistent with the public access, recreation, and scenic resource policies of the Coastal Act, and also with these policies as they are incorporated in the Ventura County LCP and the Recreation and Access Policies (Page 34-41 of the County LUP) and Environmentally Sensitive Habitat policies of the LUP (figure 1, Environmentally Sensitive Habitat Areas of the North Coast, pg. 29 of the Ventura County General Plan, Area Plan for the Coastal Zone ("LUP")). The unpermitted development impedes public access to a popular beach in Ventura County. This development includes fencing and "private property" and security signs that clearly impede and discourage public access to the beach. In addition, unpermitted landscaping and boulders have been installed along Old PCH (between the first public road and the sea), which also impede public access to the beach and could eventually block public views of the ocean.

Page 8 of the LUP, Access Management subsection within the General Statements section states, in part:

14. *The County will accept offers to dedication which will increase opportunities for public access and recreation...*
15. *The County will actively encourage other private or public agencies to accept offers of dedication... and to assume legal action to pursue beach access.*
16. *The County will continue to seek funding sources to improve existing access points.*
17. *The County will coordinate and supervise programs with other private and public organization to improve existing access, provide additional access, provide signing, parking, pedestrian and bicycle facilities, and the like.*
18. *... [T]he County will initiate action to acquire easements to and along beaches and along access corridors for which potential prescriptive rights exist.*

Section B. Access, page 37 of the LUP states, in part:

*People make their way to the beach primarily through Hobson and Faria Parks, Emma Wood State Beach, the State-managed parking lot and accessway at Rincon Point, and the Rincon Parkway [which includes the subject site, as demonstrated in Figure 4 of the LUP (Exhibit #24)].*

The objectives of this section are “To maximize public access to the North Coast sub-area consistent with private property rights, natural resources and processes, and the Coastal Act... [and] to maintain and improve existing access...”

Furthermore, the unpermitted development appears to be located in the buffer area of an Environmentally Sensitive Habitat Area (figure 1, Environmentally Sensitive Habitat Areas of the North Coast, pg. 29 of the Ventura County General Plan, Area Plan for the Coastal Zone (LUP) (Exhibit #25). Page 8 of the LUP, Environmentally Sensitive Habitats subsection within the General Statements section states, in part, “New development in buffer zones shall be limited to access paths, fences, necessary to protect environmentally sensitive areas, and similar uses which have either beneficial effects on wildlife or no significant adverse effects.” The Environmentally Sensitive Habitat is the tide pool area upcoast of the site and Mondo’s Cove. The tide pool area is exposed at lower tides and attracts public interest to this location.

As constructed, the unpermitted development is inconsistent with the County’s objectives and policies to ensure public access to and recreation on the coast. In addition, the unpermitted development appears to be located in a buffer area of an Environmentally Sensitive Habitat Area, yet another way in which the development is inconsistent with the County’s goals and objectives to protect Sensitive Habitat Areas.

As noted above, all resource policies of the Coastal Act (Chapter 3 of the Coastal Act) are fully incorporated in the Ventura County LCP. The protection of coastal access and recreation are one of the major policy goals of the Coastal Act as provided for in Sections 30210, 30211, 30213, 30214, 30220, 30221, 30222, and 30240 of the Coastal Act, (as incorporated in the LCP). In addition, the Coastal Act was designed to protect the scenic and visual qualities of coastal areas as a resource of public importance (Section 30240 and 30251 of the Coastal Act). This development appears to be inconsistent with these Coastal Act policies (as incorporated in the County LCP).

### Access and Recreation

As previously discussed, Mondo's Cove has been historically used and continues to be used as one of the most popular recreational beaches in Ventura. In addition, the strip of land between Old PCH and the rock revetment placed by CalTrans has also historically been used and continues to be used as an access point to the water and beach directly seaward of the rock revetment. Unpermitted fences have been erected laterally along portions of site and boulders, landscaping, and drainage devices have been placed on and along the site and rock revetment (Exhibits #13-#18). This unpermitted development placed on this strip of land and on top of the existing revetment creates a physical barrier to access across portions of the site and impedes this historically used access point. Physically impeding public access, which has been used by the public for years, to the beach is clearly inconsistent with the access policies of the Coastal Act, as incorporated in the County's LCP.

In addition, some or all of the beach area seaward of the rock revetment maintained by CalTrans includes tidelands owned by the State, which the public has the right to use under State law. Tidelands include, "those lands lying between the lines of mean high tide and mean low tide which are covered and uncovered successively by the ebb and flow thereof."<sup>11</sup> The State owns all tidelands and holds such lands in trust for the public. "The owners of land bordering on tidelands take to the ordinary high watermark. The high water mark is the mark made by the fixed plane of high tide where it touches the land; as the land along a body of water builds up or erodes, the ordinary high water mark necessarily moves, and thus the mark or line of mean high tide, i.e., the legal boundary, also moves."<sup>12</sup> Therefore, the boundary between private property and public tidelands is an ambulatory line.

Furthermore, the California Constitution contains certain absolute prohibitions on alienation of public tidelands.<sup>13</sup> Article 10, section 4 of the California Constitution states, in part:

*"No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State,*

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<sup>11</sup> See footnote 3, Supra.

<sup>12</sup> Id.

<sup>13</sup> California Constitution Article 10, section 3.



*shall be permitted to exclude the right of way to such water whenever it is required for a public purpose, nor to destroy or obstruct the free navigation of such water..."*

A majority, if not all, of the beach seaward of the revetment is wet, sandy beach<sup>14</sup>. The FBHOA only owns a portion of land between the MHTL and Old PCH. The unpermitted signs are located above the revetment, facing Old PCH (with the beach and ocean behind it) and state, in part, "This is not public property. It is owned by the families of the Faria Beach Colony" (Exhibit #13). These signs may give the impression that the land seaward of the signs, including the revetment, beach, and even the ocean area fronting the site, are privately owned and not for the use of the public. These signs clearly mislead the public by attempting to regulate activity on the beach and in the water. For example, the signs state, "No recreational/outdoor sporting events" and "No jet skis". These activities take place on the beach and in the ocean, most or all of such areas below the MHTL. In addition, the signs do not state where FBHOA property is located. The signs face Old PCH. Prior to crossing the revetment to access the beach, any person wishing to get to the beach must first pass the "private property" and security signs. The "private property" signs state, in bold lettering, "Notice - this is not public property. It is owned by the families of the Faria Beach Colony". Such language gives the impression that all land seaward of the signs is private property. The FBHOA does not own any property below the ambulatory MHTL and therefore, the signs are misleading.

Therefore, the private property signs clearly impede and discourage public access to a stretch of public coastline by giving the public the impression that the land (including the beach fronting the site that is, at least at times, public tidelands) is private property. Therefore, the unpermitted signs are also inconsistent with the Access and Recreation policies of the Coastal Act, as incorporated in the County's LCP, by impeding public access to public tidelands and the ocean at Mondo's Cove.

### Scenic and Visual Qualities

The Coastal Act protects the scenic and visual quality of coastal areas and requires that projects be sited and designed to protect surrounding coastal resources. In addition, the scenic and visual qualities of the coastal area must be protected as a resource of public importance<sup>15</sup>. In this case, the unpermitted development is located directly above Mondo's Cove, a heavily visited beach area, and adjacent to Pacific Coast Highway. The scenic and visual qualities that must be protected in this area consist of the views to and along the beach, the public views from Old PCH (a major coastal route directly

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<sup>14</sup> The revetment was placed at this location by CalTrans to protect Old PCH from wave attack. This provides clear evidence that the ambulatory high tide line is, at times, located directly below or at the rock revetment at Mondo's Cove.

<sup>15</sup> §30240 and §30251 of the Coastal Act, as incorporated in the County's LCP.

above and parallel to this stretch of beach) to the beach and ocean, and the views across the beach to the ocean.

The unpermitted signs, fencing, and boulders placed between Old PCH and Mondo's Cove impact public views, the visual quality of the coastal area, and are not sited and designed to prevent impacts on views to the beach and ocean from public areas. In addition, the unpermitted landscaping has the potential to completely block public views from Old PCH to the beach and ocean if such landscaping were to establish.

Therefore, as constructed, the unpermitted development would not be found consistent with Section 30240 and 30251 of the Coastal Act, as incorporated in the County's LCP.

**E. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of a Cease and Desist Order to compel the compliance with the Coastal Act and to remove the unpermitted development is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15061 (b)(2) and (b)(3), 15307, 15308 and 15321 of the CEQA Guidelines.

**F. Allegations**

1. The Faria Beach Homeowners Association undertook development without benefit of a Coastal Development Permit on a strip of land between 3560 and 3674 West Pacific Coast Highway (Old PCH) (APN 060-0-380-245), located south of Pitas Point and North of Solimar Beach, in the Faria Beach Community. Old PCH borders the inland side and the beach (Mondo's Cove) borders the seaward side of the property, where the unpermitted development was placed.
2. Mondo's Cove is a popular recreational beach used by surfers, kayakers, scuba divers, and beachgoers, alike. The public has historically gained and continues to gain access to Mondo's Cove by crossing the site and walking across the rock revetment installed by the California Department of Transportation.
3. On October 9 and 16, 2003 and November 12, 2003, Commission staff advised Dr. Roger Haring, Director of the FBHOA, that the development on the property required a Coastal Development Permit and no work should be undertaken or continue to be undertaken without first obtaining a Coastal Development Permit.
4. Despite Commission staff's advice that a Coastal Development Permit was required, the FBHOA continued to place boulders ranging in size between one to five feet in diameter, mulch, topsoil, and landscaping (including non-native and potentially invasive plants and trees) along the road shoulder adjacent to Old PCH and on top

of existing revetment, began installation of plastic drainage pipes in and through the revetment, and fencing, and maintained “private property” and security signs on the site above the beach without a Coastal Development Permit. Commission staff determined that the placement of the unpermitted development on the property was a violation of the Ventura County LCP and informed the FBHOA of this in writing on February 13, 2004.

5. On February 13, the Executive Director of the Coastal Commission sent the FBHOA a Notice Prior to Issuance of an Executive Director Cease and Desist Order (EDCDO NOI) (Exhibit #3). Neither Dr. Haring nor the FBHOA provided a “satisfactory response” as required by Section 30809(b) of the Coastal Act by the deadline given in the EDCDO NOI that work would stop and unpermitted development would be removed. In addition, neither Dr. Haring nor the FBHOA removed the specified unpermitted development by further deadlines given in the EDCDO NOI.
6. On February 26, 2004 the Executive Director of the Coastal Commission issued Executive Director Cease and Desist Order No. ED-04-CD-01 (EDCDO), which required FBHOA to 1) immediately and completely cease from further development at Mondo’s Cove, 2) immediately and completely cease from additional maintenance of the unpermitted development on the subject property, and 3) by March 5, 2004, remove all unpermitted development from Mondo’s Cove and provide photographic evidence of this removal no later than March 9, 2004.
7. FBHOA did not remove the unpermitted development and did not submit the photographic evidence of removal as required by the EDCDO. Therefore, the FBHOA is in violation of the EDCDO that was issued to them.
8. The unpermitted construction activities at the site constitute development as defined by Section 30106 of the Coastal Act and Section 8172-1 of the Ventura County Coastal Zoning Ordinance (the implementation portion of the County’s LCP).
9. The Ventura County LCP does not authorize the development located at Mondo’s cove to proceed without a Coastal Development Permit from the County of Ventura. In addition, there are no exemptions in the Ventura County LCP, the Coastal Act or the Commission’s Regulations that would authorize the unpermitted development without a coastal development permit.
10. Section 30810 of the Coastal Act gives the Coastal Commission the authority to issue Cease and Desist Orders after holding a public hearing.

**G. Violators’ Defenses and Commission’s Response**

J. Roger Myers, on behalf of the FBHOA, submitted a Statement of Defense (“SOD”), which was received by the Commission staff on March 16, 2004, and is included as

Exhibit #22. The following paragraphs describe the defenses contained in the SOD and set forth the Commission's response to each defense.

The following are the statements made by J. Roger Myers as a representative to the FBHOA ("Respondents").

**1. The Respondents' Defense:**

***"FBHOA has made a good faith effort to secure any required permits for the landscaping."***

**A) "Representatives of FBHOA have made numerous inquiries of the County and the Coastal Commission as to whether a permit is needed to landscape the Cove area next to [Old PCH] and have always been willing to apply for any required permits. We were not informed that the Commission had decided that a permit is needed until February [2004]... On May 2, 2003... [Dr. Haring] had a telephone conversation with James Johnson of the Ventura Office of the Coastal Commission and informed him of the landscaping plans. ... Mr. Johnson indicated that... FBHOA should apply to the County for a permit."**

**The Defense further states that, in a May 23, 2003 letter, that FBHOA informed the County of the proposed plans at Mondo's Cove and had "numerous" meetings (on undisclosed dates) with County staff regarding the development. Commission staff advised the FBHOA to contact the County regarding the necessity of a permit, and if the County felt that a permit was not necessary to contact the Commission concerning the design of the landscaping. The SOD also states that Ventura County Planning staff informed the FBHOA that a permit was not necessary, and that the FBHOA was not informed that the Commission had decided that a permit was needed until February 2004.**

**Commission's Response:**

The SOD submitted by the FBHOA begins by stating that the FBHOA made a good faith effort to secure permits "for the landscaping". While Commission staff has determined that landscaping in this location does require a permit, the unpermitted development also included the placement of "private property" and security signs, fencing, boulders, and drainage devices. It does not appear from their SOD that such development beyond the landscaping was presented to the County in its review of the project. Assuming arguendo, that all of the unpermitted development was presented to the County for their review, nevertheless, the placement of "private property" and security signs, fencing, boulders, landscaping, grading, and drainage devices 1) meets the definition of "development" set forth in Section 30106 of the Coastal Act and Article 2, Section 8172-1 of the Ventura County LCP, 2) requires a Coastal Development Permit and was undertaken without benefit of a Coastal Development Permit, 3) are not

exempt from the permitting authority of the Ventura County LCP and Coastal Act, and 4) were constructed in violation of the County's LCP and Coastal Act.

As noted in Section IV.A. of this staff report, on October 9 and 16 and November 12, 2003, Commission staff advised the FBHOA that a Coastal Development Permit was required for the unpermitted development (and not February 2004, as alleged in the FBHOA's SOD).<sup>16</sup> Therefore, the FBHOA was given notice that the unpermitted development, as constructed, required a Coastal Development Permit.

Moreover, the FBHOA commenced development prior to obtaining an alleged verbal opinion from Ventura County that the landscaping did not require a Coastal Development Permit.<sup>17</sup> The verbal communication (according the Ventura County staff, there was no written documentation of the determination that a CDP was not required for all of the unpermitted development) took place after several conversations between Commission staff and the FBHOA on October 9 and 16, 2003, in which Commission staff advised the FBHOA of the necessity to submit a CDP application. On November 12, 2003, Commission staff learned of the verbal determination from the Ventura County Planning Department that a permit was not required. At this time, based on an analysis of the LCP, Commission staff again advised the FBHOA that a CDP was necessary for the development at Mondo's Cove.

The SOD states that on November 13, 2003, Dr. Haring informed Commission staff that the planting would commence on December 8, 2003. Commission staff stated that authorization to continue the development could not be given prior to receiving a Coastal Development Permit. A CDP was not applied for nor granted to the FBHOA for the placement of signs, fencing, boulders, topsoil and mulch, landscaping, and drainage devices. Therefore, the FBHOA undertook development without a Coastal Development Permit in violation of the Ventura County LCP and Coastal Act.

**B) "Dr. Haring informed [Commission staff] of the problems caused by the surf schools, which include health and safety issues..."**

**Commission's Response:**

The alleged "problems" caused by surf schools are irrelevant to this enforcement action and do not provide a defense to Coastal Act violations. The unpermitted development

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<sup>16</sup> The Statement of Defense includes descriptions of an October 16 and November 12, 2003 conversation between Commission staff and a representative of the FBHOA regarding the requirement of a CDP for the unpermitted development. The SOD failed to include an October 9, 2003 conversation in which Commission staff also advised the FBHOA that a CDP was required for the unpermitted development.

<sup>17</sup> In a letter from J. Roger Myers of the FBHOA to Chris Stephens, Planning Director, Ventura County Planning Department, Mr. Myers stated, "On or about November 12, 2003... the [FBHOA] was informed by Ron Vogelbaum of your staff that a [CDP] was not required for landscaping adjacent to West [PCH] at Faria Beach Cove." (Exhibit #9)

violates the County LCP and the Coastal Act because it was constructed without authorization in a CDP. Furthermore, the development as constructed clearly impedes public access to Mondo's Cove. This Cease and Desist Order would not affect State or Local agencies enforcing any of their Ordinances, including those regarding public health and safety, so long as its enforcement is consistent with the County's certified LCP and the Coastal Act.

**C) "Later, while preparation for the landscaping was being installed, the contractor advised putting in some drainage pipes to prevent erosion. The area is badly eroded because CalTrans has not maintained the revetments. The landscaping is intended to prevent further erosion. Temporary plastic fencing was later installed at the ends of the Cove because people were destroying the plants."**

**Commission's Response:**

The advice given by a contractor does not obviate the need to comply with the requirements of the Coastal Act and the County LCP. It clearly does not relieve the FBHOA of the requirement to obtain a CDP, which is clearly required for such development in this location. As stated in the SOD, only the landscaping was reviewed by the Ventura County Planning Department. Even if the Planning Department did review the landscape and then determined that no CDP was necessary, the drainage devices and fencing that were installed on the site were not submitted to the County for review in a CDP application. Commission staff has reviewed the County LCP and determined that there are no provisions within the LCP that exempt any of the unpermitted development. Commission staff advised the FBHOA of the necessity of a CDP for the development as constructed. The FBHOA did not obtain a CDP prior to the commencement of development. The FBHOA has not submitted a CDP application nor received a CDP for the development at Mondo's Cove. The installation of such structures is "development" as defined by the Coastal Act and the County LCP, and requires a CDP.

Furthermore, the unpermitted fill placed on the site contributed material that is eroding through the revetment and onto the beach. The alleged lack of maintenance of the revetment, consisting of large boulders that do not appear to be subject to erosion, is not the cause of this erosion. Furthermore, there is no indication that maintenance to CalTrans' revetment is required at this time to protect the adjacent roadway, which is the actual purpose of the revetment.

**D) "Apparently, Coastal Commission staff had some confidential communications with County staff in January and February 2004 who according to the Order 'declined to take enforcement action.' FBHOA was not informed of these communications between Coastal Commission staff and the County."**

**Commission's Response:**

As required in Section 30810(a)(2) of the Coastal Act, the Commission may issue an Order to enforce any requirement of a certified Local Coastal Program if "The Commission requests and the local government... declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources." Commission staff had to first find whether the County of Ventura was going to take enforcement action and if they were, whether they were going to enforce their LCP in a timely manner.

Therefore, on January 21, 2004, Commission staff sent the County of Ventura a letter describing the unpermitted development and asking the County if it intended to take action to address the violations of the certified LCP at Mondo's Cove. This letter explained to the County that if the County is unable to take action to enforce the provisions of the LCP or if the County fails to take sufficient action to resolve the violations, the Commission would take responsibility for enforcement of the LCP. The letter required the County to respond by January 23, 2004, if it planned to take action rather than the Commission. The County did not respond in writing to this January 20<sup>th</sup> letter.

In addition, on February 2, 2004, Commission staff contacted Christopher Stevens, Ventura County Planning Director, asking the County 1) whether they were going to take enforcement action, and 2) whether the County had issued any permits or permit exemptions for the development at Mondo's Cove.

On February 3, 2004, Mr. Stevens left a voicemail message for Commission staff stating that 1) the County was declining to take enforcement action regarding the unpermitted development; 2) the County had not granted any permits, permit exemptions, or taken any action whatsoever regarding the unpermitted development; 3) prior to the January 20<sup>th</sup> letter, the County was not aware that development had occurred at Mondo's Cove; and 4) after reviewing the development "after-the-fact", the County did not find anything in the LCP that would indicate the work was a violation. In a February 5, 2004 letter to the County Planning Department, Commission staff confirmed that the County was declining to take enforcement action regarding the development at Mondo's Cove (Exhibit #23). Commission staff also reviewed the LCP and determined that no policies or standards in the LCP exempt such development from the permitting process and that the County's LCP does not authorize the development at Mondo's Cove to proceed without a CDP from the County of Ventura.<sup>18</sup>

On March 1, 2004, the FBHOA sent a letter to the Ventura County Planning Department stating that the FBHOA was informed by Ron Vogelbaum of the Ventura County Planning Department on or about November 12, 2003, that a Coastal Development Permit was not required for landscaping adjacent to West Pacific Coast Highway at

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<sup>18</sup> See Section D.2. above for an analysis of the LCP provisions

Faria Beach Cove (Exhibit #9). This letter continued by stating, "...we would like to formally apply for a Coastal Development Permit for the landscaping. Please send me the appropriate forms and regulations."

In a March 3, 2004 conversation, Dr. Haring stated that the Ventura County Planning Department refused to accept a CDP application seeking approval of the development at the site and the County continued to take the position that the development does not require a CDP. Dr. Haring again stated that he did not have the authority from the FBHOA to remove the development but he wanted to resolve the violation without complete removal of the development, as required in the EDCDO. Finally, Dr. Haring stated that the FBHOA has no intent of blocking public access, but does not want unfettered "come as you go" public access across the site to the beach.

Subsequent to this March 3, 2004 conversation with Dr. Haring, Commission staff then had discussions with the Ventura County Planning Department. In this discussion, the County Planning Department stated that the County is willing to accept and process a CDP application for any future proposed development at the site.

**E) "Photographs of the landscaping show that the landscaping does not block visual or public access to the Cove and is less intrusive than the 'natural' vegetation."**

**Commission's Response:**

The photographs sited in the SOD were taken during its installation and after much of the landscaping apparently failed to establish. If such landscaping were to establish it could create a wall-like barrier that would block both the public's view of the ocean and their ability to access Mondo's Cove. Even if the landscaping alone would not block public views and public access, unpermitted "private property" and security signs, fencing, and boulders clearly impede and discourage public access and diminish the scenic quality of this coastal area (as described more fully in Section D, above). Finally, even if all the unpermitted development did not block public views and public access to Mondo's Cove, such unpermitted development clearly constitutes "development" within the meaning of Section 30106 of the Coastal Act and Article 2, Section 8172-1 of the Ventura County LCP; and thus requires a Coastal Development Permit. Such a CDP was not applied for nor granted for the above-described development. Therefore, the development was undertaken in violation of the County's LCP and the Coastal Act and the requirements for issuance of a Cease and Desist Order have been met.



## **2. The Respondents' Defense:**

***“The County correctly determined that a Coastal Development Permit is not needed for the landscaping.”<sup>19</sup>***

### **A) “There is no right of public access to the Cove.”**

- 1) “No where in the LCP is the Cove identified as a public beach or a public accessway from Pacific Coast Highway. Faria Park... is the only identified public accessway along Faria Beach. The same is true in the Coastal Commission’s Coastal Access Guide; the Cove is not identified as a public accessway.”**

### **Commission’s Response:**

The County’s LCP describes and lists County and State Parks where access to the beach is provided for the public.<sup>20</sup> In addition, the Commission’s Coastal Access Guide generally describes and lists opened, public easements as well as City, County, and State maintained public access ways to the beach. It is not exhaustive, and does not imply that all area to which the public has or may have rights are contained therein. Furthermore, these documents do not depict access points across portions of private property that have historically been and continue to be used to access the beach and ocean. Even if the site was held completely in private ownership and the public did not have a prescriptive right to use the property to access the beach and ocean, the development was undertaken without benefit of a Coastal Development Permit in violation of the County’s LCP and the Coastal Act.

- 2) “The LCP (fig. 15) shows the entire Faria Beach, including the Cove, as private property with seaward boundaries far beyond the existing seawalls. The LCP recognizes that ‘people make their way to the beach primarily through Hobson and Faria County Parks, Emma Wood State Beach, the state managed parking lot and accessway at Rincon Point and the Rincon Parkway,’ not the Cove. No vertical access rights have ever been acquired by the public.”**

### **Commission’s Response:**

Figure 15 of the LCP provides a partial explanation of the property lines of the Faria Beach Community (as they appear “on paper”) (Exhibit #26). For example, this map

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<sup>19</sup> Commission staff assumes, for response to this defense, that the “landscaping” in this defense includes all the unpermitted development at this site.

<sup>20</sup> The defense alleges that Faria County Park is the only identified public accessway along Faria Beach. Staff notes that there are 27 recorded deed restrictions for lateral public access on portions of private property along Faria Beach.

does not take into account the fact that the lands seaward of the MHTL are, by State Law, public lands nor does it include any possible easements or ownership that CalTrans may have across the site. The SOD correctly quotes, but misrepresents, the LCP, which states that people “make their way to the beach primarily through Hobson and Faria County Parks, Emma Wood State Beach, the state managed parking lot and accessway at Rincon Point and the Rincon Parkway.” Figure 4 of the County’s LCP depicts the Recreational Areas in the North Coast area of Ventura, including Faria County Parks, Emma Wood State Beach, the state managed parking lot and accessway at Rincon Point and the Rincon Parkway (Exhibit #24). In fact, Rincon Parkway encompasses Mondo’s Cove and the site of unpermitted development. Therefore, the LCP recognizes that the public uses this stretch of coast for recreation.

In addition, there is evidence from historic photographs and first hand accounts that the public has used the site to access Mondo’s Cove and the ocean here since at least the early 1960’s and possibly as early as the 1940’s without permission from the property owners during these times.

Furthermore, most or all of the beach at Mondo’s Cove appears to lie below the ambulatory MHTL. As noted previously, by State Law, all lands seaward of the ambulatory MHTL are public.

- 3) “Until the *Nollan* case was decided in 1987 (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825), offers to dedicate lateral access (right to pass and repass) were routinely exacted when landowners applied to [reconstruct their beach homes].”**

**Commission’s Response:**

This enforcement action is being presented to the Commission for a Cease and Desist Order to resolve a violation of the County LCP and the Coastal Act; as such, *Nollan*, which addressed issues regarding CDP conditions, is not relevant. The unpermitted development was undertaken without a Coastal Development Permit; and therefore the Commission has the authority to issue this Cease and Desist Order.

- 4) “An objective of the LCP is ‘To provide direction to the State, and local agencies as appropriate, for improving and increasing public recreational opportunities on the North Coast consistent with public health and safety, and the protection of private property rights.’ (LCP, p. 30.)”**

**Commission’s Response:**

It is apparent from this Section of the LCP that it is the County’s goal and objective to improve and increase public recreational opportunities in this area of the coast. In addition, as stated in the Access Management subsection of the County LCP, the County’s goals and objectives include:

*The County will accept offers to dedication which will increase opportunities for public access and recreation... The County will actively encourage other private or public agencies to accept offers of dedication..., and to assume legal action to pursue beach access. The County will continue to seek funding sources to improve existing access points. The County will coordinate and supervise programs with other private and public organization to improve existing access, provide additional access, provide signing, parking, pedestrian and bicycle facilities, and the like.... [T]he County will initiate action to acquire easements to and along beaches and along access corridors for which potential prescriptive rights exist.*

As previously noted, this site has been historically used and continues to be used by the public to access the beach and ocean. The ambulatory MHTL at most times may be located directly below the existing rock revetment, and therefore this area may at times be public property (under State Law). The unpermitted development impedes access across a portion of the property that has historically been used to access this public beach, in violation of the County's goals and objectives noted in the LCP. The unpermitted development constitutes "development" within the meaning of the definition in the LCP and Coastal Act and therefore requires a Coastal Development Permit. No CDP was issued for the development; and therefore the Commission has the authority to issue a Cease and Desist Order to resolve the violation.

- 5) "The LCP recognizes that 'Trash and sanitation are major problems and illegal camping and parking are frequent.' This is certainly the case at Faria Beach where the FBHOA pays to clean up the public's trash and people illegally park at the top of the Cove, and on the bike path and railroad right of way."**

**Commission's Response:**

The Commission is certainly sympathetic to concerns such as littering in coastal areas. However, there are other State and Local laws regarding appropriate use of such areas and this cannot be a justification of violating the Coastal Act and the County LCP, which is itself designed to protect coastal resources. In addition, there is no evidence that parking above the Cove in CalTrans' easement and in the railroad right of way is an illegal activity. As noted above, the public has historically used and continues to use this area to access Mondo's Cove.

Regardless of the FBHOA's concerns, as noted throughout this staff report, the FBHOA undertook development without the required Coastal Development Permit. Therefore, the Commission has the authority to issue a Cease and Desist Order to resolve the violation.

- 6) **“Until the surf schools started conducting their business on the Cove, public use of the Cove was relatively peaceful. Now, for several years, as many as 4 surf schools with dozens of children in each class have been monopolizing the Cove and the ocean. Unleashed dogs often accompany them. There are no toilets, safe access, medical facilities, or lifeguards and parking is illegal. There is no access for emergency response to injuries.”**

**Commission’s Response:**

As reflected in the statement above, much of the development performed by the FBHOA either directly or indirectly appears to be attempts to regulate not just use of the thin strip of land that they apparently own, but the use of the beach and ocean itself. The FBHOA does not have the authority to “regulate” recreational activities on public tidelands. All land and ocean seaward of the ambulatory MHTL is public property. Furthermore, as noted above, there is evidence that the public has historically used and continues to use this site to access Mondo’s Cove. Many of California’s beaches do not have amenities such as medical facilities, lifeguards, and restroom facilities. The absence of such facilities does not justify restricting access to the coast. Furthermore, we note that under California Civil Code section 846, private landowners are immune from liability for injuries sustained when the public enters their property for any recreational purpose.<sup>21</sup>

Most importantly, the alleged problems caused by Mondo’s Cove visitors, including surf schools, are irrelevant to this enforcement action, which is based on the presence of unpermitted development. This Cease and Desist Order would not affect State or Local agencies enforcing any of their Ordinances, including those regarding public health and safety, so long as its enforcement is consistent with the County’s certified LCP and the Coastal Act.

**B) “Grading”**

**“The LCP does not require a permit for landscaping on private property. With respect to grading, a permit is only required for hillside grading of over 20% slopes with over 50 cubic yards of cut or fill or over ½ acre of brush clearance. The landscaping does not meet this criteria. No grading within the meaning of Public Resources Code section 30106 occurred. If a Coastal Development Permit is required for this landscaping, a permit would be required for landscaping of every private front yard along the road side of the coast.”**

**Commission’s Response:**

Section 30106 of the Coastal Act and Article 2, Section 8172-1 of the Ventura County LCP defines development as “...on land, in or under water, the placement or erection of

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<sup>21</sup> Staff notes that this provision is sited assuming that the FBHOA owns a portion of or all of the property.

any solid material or structure... grading... of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto..." The placement of topsoil and mulch directly adjacent to revetment and the beach is "development" as defined by the Coastal Act and the County LCP. Furthermore, Section 8174-6 of the County's Coastal Zoning Ordinance, classifies grading less than 50 cubic yards as "Minor Development". "Minor development" under Section 8174-6 specifically does not include development that is: 1) on or in a beach, tidelands, edge of coastal bluff, riparian area or within 100 feet of such area; 2) on lots between the mean high tide line and the first public road parallel to the sea (or within 300 feet of the mean high tide line where the road is not parallel to the sea); and 3) on lots immediately adjacent to the inland extent of any beach.

Even if the development at issue were otherwise "minor development", this unpermitted development is located between the mean high tide line and first public road, adjacent to the beach and within 100 feet of tidelands. In addition, the unpermitted fencing is also not "minor development" because it may block access to the beach. In summary, the unpermitted development meets all three of the exceptions to the definition of "minor development". Therefore, the unpermitted development cannot be classified as "minor development" and requires a CDP. In addition, Section 8174-4, Permitted Uses By Zone, requires a Zoning Clearance for grading of less than 50 cubic yards and a Planned Development Permit for grading of 50 cubic yards or more. The FBHOA did not receive any permits, including a Coastal Development Permit for the unpermitted grading.

In addition, the exemptions that apply to additions to existing single-family homes, including those regarding landscaping, do not apply in this case, as the site is a vacant lot with no primary structure. In addition and as discussed throughout this staff report, the unpermitted development was placed on property located between the MHTL and the first public road and directly adjacent to the beach and changes the intensity of use of the beach and ocean. Therefore, there are no provisions found in either the County LCP or the Coastal Act that would exempt such development from permitting requirements.

As previously discussed, the unpermitted development includes the placement of "private property" and security signs, fencing, boulders, landscaping, and drainage devices. This constitutes "development" as defined by the Coastal Act and the County LCP and does require a Coastal Development Permit.

### **C) "Planting"**

**"The plants were those commonly found along this area of the coast. They were selected to be compatible with native species.... The plants serve to control erosion and invasive, exotic species. The LCP and the Coastal Act do not require a permit for landscaping. The newer plants are less visually obtrusive than the 'native plants'."**

**Commission's Response:**

The FBHOA says the plants serve to “control... invasive, exotic species.” Unfortunately, in fact, the unpermitted development includes landscaping with potentially invasive, non-native plant species, which can easily overwhelm established native plant species. For example, a preliminary project plan created by the FBHOA and photographic evidence indicates that Mexican Fan Palms, among other potentially exotic, non-native plant species, were planted on the site (Exhibit #8). Mexican Fan Palms have been designated by the California Native Plant Society to be invasive plant species. Such plants are also not adapted to control erosion, as their roots systems are not deep spreading roots typically used for erosion control. Furthermore, it appears that the fill placed by the FBHOA is eroding through the revetment and onto the beach. The unpermitted development has increased erosion rather than prevented it. For a response regarding permits and landscaping, see response to (B), above.

As previously discussed, the unpermitted development includes the placement of “private property” and security signs, fencing, boulders, landscaping, and drainage devices. This constitutes “development” as defined by the Coastal Act and the County LCP and does require a Coastal Development Permit.

**D) “Rocks”**

**“All the rocks are entirely on private property do not impact the shoreline and are needed to control further erosion. The two larger rocks are indisguishable (sic) from rocks placed there by CalTrans to protect Pacific Coast Highway. The rocks bordering the planting beds are small and similar to those in many private front yards along the coast.”**

Whether the rocks were placed on private property, CalTrans easement, or State Tidelands, such activity is “development” and, given that the development is located within the Coastal Zone, requires a Coastal Development Permit. The size of the rocks and their association with similar rocks previously placed by CalTrans for the rock revetment is irrelevant. In addition, the rocks creating the planter cannot be compared to rocks placed in front yards as this development is not associated with an addition to an existing single family home and is located directly adjacent to the beach between the MHTL and the first public road. Therefore, as discussed in the response for (B) above, the exemption requirements given to certain additions to existing single-family homes, including landscaping, do not apply in this situation.

**E) “Drainage Pipes”**

**“The drainage pipes were installed on the advice of the contractor to control existing erosion. They do not discharge anything new into the ocean; they redirect existing rainwater drainage more safely.”**

**Commission's Response:**

The advice given by a contractor does not obviate the need to comply with the requirements of the Coastal Act and the County LCP. It clearly does not relieve the FBHOA of the requirement to obtain a CDP, which is clearly required for such development in this location. As stated in the SOD, only the landscaping was reviewed by the Ventura County Planning Department. Even if the Planning Department did review the landscaping and then determined that no CDP was necessary, the drainage devices and fencing that were installed on the site were not submitted to the County for review nor were they the subject of a CDP application. The installation of such structures immediately adjacent to a beach and between the Mean High Tide Line and the first public road requires a CDP. The FBHOA did not obtain a CDP for the development.

Furthermore, the unpermitted fill placed on the site contributed material that is eroding through the revetment and onto the beach. The alleged lack of maintenance of the revetment, consisting of large boulders that do not appear to be subject to erosion, is not the cause of this erosion. Furthermore, there is no indication that maintenance to CalTrans' revetment is required at this time to protect the adjacent roadway. Finally, if erosion was occurring at the site prior to the unpermitted development, the placement of erosion control measures located adjacent to the beach that directs runoff water onto the beach is development that requires a Coastal Development Permit.

**F) "Temporary fences"**

**"Temporary plastic fences in two locations were added because people were destroying the plants.... The fences will be removed when the plants are established. Less visible temporary fencing (like chicken wire) could be substituted for the orange plastic temporary fences."**

**Commission's Response:**

Section 8174-6 of the County's Coastal Zoning Ordinance, classifies fences or walls 6' feet in height or less, except such walls or fences that may block public access to the beach, as "Minor Development". The development in this case is not considered "minor" under the LCP since it includes fences that may block public access. Moreover, "minor development" under Section 8174-6 does not include development that is: 1) on or in a beach, tidelands, edge of coastal bluff, riparian area or within 100 feet of such area; 2) on lots between the mean high tide line and the first public road parallel to the sea (or within 300 feet of the mean high tide line where the road is not parallel to the sea); and 3) on lots immediately adjacent to the inland extent of any beach. Therefore, the development is not considered "minor" and does require a CDP.

Even if the development at issue were otherwise "minor development", this unpermitted development impedes public access and is located between the mean high tide line and

first public road, adjacent to the beach, within 100 feet of tidelands, and includes a fence that may block public access to the beach. Therefore, the unpermitted development cannot be classified as “minor development” under the applicable County LCP policies and therefore is not exempt for permitting requirements.

Whether the FBHOA intends that the fencing be permanent or temporary is irrelevant. The erection of fencing is considered “development” and is not exempt under the provisions of the County LCP and the Coastal Act. The fencing impedes public access to the beach and was erected without benefit of a Coastal Development Permit.

### G) “Signs”

**“The signs are permitted by Civil Code section 1008 and have been in place in substantially the same fashion since the Civil Code section was adopted by the Legislature for the purposes of providing landowners with the ability to protect their private property rights.”**

#### **Commission’s Response:**

Section 30600(a) of the Coastal Act (as incorporated in the County of Ventura’s LCP) states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. Photographs taken in 1981, 1982, and 1983 show the entire length of the site (Exhibit #19 & #20). No signs existed at the time of these photographs. Staff believes that the FBHOA erected signs in approximately 1986 (without benefit of a CDP), which state:<sup>22</sup>

*NOTICE – This is not public property. It is owned by the families of Faria Beach. We appreciate your co-operation in obeying our restrictions: \*No Jet skis \*No fires \*Keep dogs on leash. Please take your garbage with you – we have no refuse collection service. Faria Beach Homeowners Association. (Exhibit #12)*

These signs were erected after the enactment of the Coastal Act without a Coastal Development Permit and prior to certification of the County’s LCP. Therefore, these signs are not exempt from permitting requirements, unpermitted, and a violation of the Coastal Act. In addition, there is evidence that the public used the site to reach Mondo’s Cove prior to the installation of such signs.

Recently<sup>23</sup>, new signs were erected (also, without benefit of a CDP) on the site and are in place currently, that state:

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<sup>22</sup> A photograph of the original sign was included in Insight, “From Private Plot to Public Beach”, December 15, 1986, pg. 50-51, by Charlotte Low.

<sup>23</sup> Staff is unaware precisely when these new signs were erected on the site; however, Commission staff has evidence that these new signs were not in place as of 1989.



*NOTICE This is not public property. It is owned by the families of the Faria Beach Colony. We appreciate your cooperation in obeying the restrictions. It is a misdemeanor to operate any commercial business, including but not limited to, surf schools, camps, recreational/outdoor sporting events, including surf contests – Ventura County Coastal Zoning Ordinance Div 8, Ch 1.1, Art. 3, 4, 13. Operation of any such commercial business is also trespassing, trespassing may be subject to criminal and/or civil prosecution and related penalties and damages. No jet skis – No fires – Keep dogs on a leash. Please take your garbage with you. We do not have refuse collection service. Faria Beach Homeowners Association. Right to pass by permission and subject to control of owner: CA Civil code 1008. (Exhibit #13)*

These new signs were also placed on the strip of property between the existing revetment and Old PCH without a CDP. The FBHOA only owns a portion of land between the MHTL and Old PCH. As explained above, it appears that, at times, the public tidelands may extend to the base of the revetment. These signs are very misleading in that they purport to regulate activity on public tidelands and in the water, property that the FBHOA does not own. For example, the signs state, “No recreational/outdoor sporting events” and “No jet skis”. These activities take place on public tidelands and in the ocean. Therefore, the signs were not only clearly placed without a Coastal Development Permit but also undoubtedly inconsistent with the access and recreation policies of the Coastal Act (as incorporated in the County LCP) and the County’s goals and objections in their LCP.<sup>24</sup>

### **3. The Respondents’ Defense:**

#### ***“The Landscaping Does Not Block Access to the Cove”***

**A) “As explained in paragraph 2A, there is no right of public access to the Cove and pursuant to Civil Code section 813 and 1008 the FBHOA has retained the right to control public access to the Cove.”**

**“[The] signs have been in the same place in substantially the same format since the Legislature adopted the section to enable beachfront property owners to permit controlled public access while protecting their private property rights.”<sup>25</sup>**

#### **Commission’s Response:**

On August 28, 1988, the FBHOA recorded a “Right to Pass” document pursuant to California Civil Code Section 813 (See Exhibit #22, FBHOA’s SOD). Civil Code Section 813 States, “The recorded notice is conclusive evidence that subsequent use of the land during the time such notice is in effect by the public or any user for any purpose

<sup>24</sup> See also discussions regarding signs and the access policies of the Coastal Act and LCP, above.

<sup>25</sup> This Defense was raised earlier in the Statement of Defense but is being addressed by staff in this section for simplicity.

(other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is permissive and with consent in any judicial proceeding involving the issue as to whether all or any portion of such land has been dedicated to public use or whether any user has a prescriptive right in such land or any portion thereof.” However, Section 813 continues by stating, “The recording of a notice pursuant to this section shall not be deemed to affect rights vested at the time of recording.” The recording of this document pursuant to Civil Code Section 813 applies to “subsequent use of the land” and does not affect or extinguish any rights vested prior to the recording. There is evidence that the public has historically used this site to access Mondo’s Cove for years prior to 1988. Therefore, the recording of this “Right to Pass” does not defeat claims of prescriptive rights to use this site to access Mondo’s Cove.

Whether or not there is some historic public use, all the development placed at Mondo’s Cove requires a CDP. Moreover, as noted above, the signs are misleading, and serve to impede and discourage public use of even the undisputedly public portions of Mondo’s Cove.

The SOD also claims that pursuant to California Civil Code Section 1008, “the FBHOA has retained the right to control public access to the Cove”. Civil Code Section 1008 states, “No use by any person or persons, no matter how long continued, of any land, shall ever ripen into an easement by prescription, if the owner of such property posts at each entrance to the property or at intervals of not more than 200 feet along the boundary a sign reading substantially as follows: ‘Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code’.” As described in the previous response in Section G., above, no signs existed anywhere on the site prior to approximately 1983, as demonstrated in photographic documentation. These signs that were erected at some time after 1983 (these signs were apparently placed in approximately 1986)<sup>26</sup> did not include language referring to Civil Code Section 1008. Signs that included language referencing Civil Code Section 1008 were erected some time after this date.

The SOD alleges that the “signs have been in the same place in substantially the same format since the Legislature adopted the section to enable beachfront property owners to permit controlled public access while protecting their private property rights.” To respond to this statement, Commission staff has assumed that the FBHOA referred to Civil Code Section 813 and 1008 in their SOD. California Civil Code Section 813 was added by Statute in 1963 and California Civil Code Section 1008 was added by Statute in 1965. As previously noted, photographic evidence demonstrates that there were no signs on the subject site in 1981, 1982, or 1983. Therefore, the claim that the signs existed at the time the Legislature adopted these sections is not correct.

Even if these signs were legally erected on the site, there is evidence that the public has historically used this site to access Mondo’s Cove for years prior the date the signs

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<sup>26</sup> See footnote 22, Supra.

were installed. The placement of signs which include language consistent with Civil Code Section 1008 does not defeat any valid claims of prescriptive rights to use the site to access Mondo's Cove.

Assuming arguendo that the public has no right to claim that there is a prescriptive right to use the property to access Mondo's Cove, all signs placed along the site were still erected after 1973 and without benefit of a Coastal Development Permit where one is required. Therefore, the requirement for the Commission to issue a Cease and Desist Order has been established.

**B) "The so-called "stairs" at the south end of the Cove are not stairs at all. This is excess concrete which was apparently spilled when the owners enlarged their driveway at 3560 West Pacific Coast Highway. The owners were permitted to extend their driveway onto Parcel B (the Cove). This concrete does not extend to the beach. This is obviously not a safe access."**

**Commission's Response:**

While Commission staff has been provided no evidence that the construction of the driveway and placement of concrete on the revetment was undertaken with the benefit of a Coastal Development Permit, the public does use these "step-like" structures to access the beach and ocean. Even if the cement does not extend all the way to the beach, it does provide an improved surface to walk down. Even assuming that the public does not use this particular section of the site to access the beach, the placement of fencing, "private property" and security signs, boulders, landscaping, and drainage devices without a Coastal Development Permit is a violation of the Ventura County LCP. In addition, this unpermitted development impedes access to the beach and ocean at Mondo's Cove.

**C) "The surf schools were utilizing the northerly portion of the Cove in Summers of 2002 and 2003 prior to installation of the landscaping in December 2003. The people continue to access all over the rocks since the landscaping was installed. (See photographs numbers 18, 19, 20, & 22). As shown by photographs taken March 2004, the landscaping does not stop people from using the Cove. (See, photographs numbers 16-22.)"**

**Commission's Response:**

The photographs of the landscaping taken in 2004 depict surfers crossing the site and the rock revetment to access the beach. At this time, it is apparent that the landscaping failed to establish in at least some places. If the landscaping were to establish however, the plantings would impede public access in the locations it was planted by creating a wall of vegetation. In addition, "private property" and security signs, boulders, and drainage devices were placed on the site without a permit and inconsistent with the Resource policies of the Ventura County LCP. These "private property" signs are very

misleading in that they purport to regulate activity on State tidelands and in the water, property that the FBHOA does not own. Therefore, the signs were not only clearly placed without a Coastal Development Permit but also undoubtedly inconsistent with the access and recreation policies of the Coastal Act (as incorporated in the County LCP) and the County's goals and objections in their LCP.

**4. The Respondents' Defense:**

***"The surf schools are an illegal use of the Cove."***

**"The entire Cove is zoned R-B (Residential Beach). (LCP, p. 23.) The only compatible use is residential. (LCP, fig. 33 [zoning compatibility matrix].) Commercial use violates the LCP and the County's zoning. Under the LCP, commercial facilities are restricted to the "Coastal Commercial" (C-C) zone. (LCP, p. 7.) In addition, the surf schools regularly illegally park along the Cove and set up business, blocking visual and public access. (See, photograph number 1 [surf school headquarters and van at northerly end of the Cove adjacent to Pacific Coast Highway].) It would be *improper* for the Coastal Commission to issue a Cease and Desist Order to protect the illegal use of the Cove by Surf Schools [emphasis by FBHOA]."**

**Commission's Response:**

This Cease and Desist Order is not designed to protect the use of any one group of the public, particularly any not in compliance with any applicable laws and regulations, but to obtain compliance with the County LCP and Coastal Act and their coastal resource protection policies, including protecting public access generally. Any "problems" caused by surf schools are irrelevant to this enforcement action. The unpermitted development clearly impedes public access to Mondo's Cove. This Cease and Desist Order would not affect State or Local agencies enforcing any of their Ordinances, including those regarding public health and safety, so long as its enforcement is consistent with the County's certified LCP and the Coastal Act.

While Commission staff appreciates the possible conflicts that may arise from any unauthorized use of Mondo's Cove by commercial activity, this Cease and Desist Order, if issued by the Commission, would resolve unpermitted development that was placed on a strip of property directly adjacent to the beach, which impedes public access to a very popular recreational area. This recreational area, Mondo's Cove, is used by a wide range of beach-goers, from surfers, scuba divers, and kayakers to those choosing to sunbathe, picnic, or view tide pools. Commission staff is not recommending that the Commission issue this Cease and Desist Order to protect any illegal activity at Mondo's Cove; the Cease and Desist Order would address the unpermitted development that significantly impacts the public's ability to access the beach and ocean in this location.

**5. The Respondents' Defense:**

***FBHOA would like to work with the Coastal Commission and the County to manage public use of the Cove to protect sensitive coastal resources and insure the public health and safety of Cove users.***

**“Over use of the Cove and commercial use of the Cove, with its attendant trash, water pollution, destruction of tidepools, nuisance activities, traffic hazards and public health and safety problems have increasingly jeopardized this sensitive environment. FBHOA pays \$150 a month to have the Cove cleaned up. FBHOA would welcome managed public use of the Cove and would be happy to work with the Coastal Commission and the County to resolve these public health and safety issues.”**

**Commission's Response:**

The FBHOA has had many opportunities to propose an amicable resolution to this violation and work with the Commission to protect coastal resources in a way that complies with the County LCP and the Coastal Act. In fact, they declined to either comply or actively resolve this violation when they received an NOI and an EDCDO. Subsequently, after receiving an NOI for a Commission Cease and Desist Order, Commission staff discussed the option of reaching a Consent Agreement to resolve the violation prior to the Commission hearing. Commission staff advised the FBHOA that any such Consent Agreement would have to include, among other things, unimpeded public access across the thin strip of property to reach the beach and ocean at Mondo's Cove. As of the date of this staff report, the FBHOA has not responded to any resolution attempts.

The Commission's fundamental objectives are to protect Coastal Resources such as those listed in this defense. All development (through the submittal of a Coastal Development Permit application) must be found consistent with these resource policies for the issuance of Coastal Development Permit. While Commission staff appreciates the concern the FBHOA has for the sensitive coastal resources at Mondo's Cove and how certain development could affect such resources, the development at issue here clearly impedes public access to Mondo's Cove regardless of the FBHOA's concerns regarding the use of the beach. Any “managed” or “controlled” access that might impede the public's ability to reach the shoreline in this location would need to be carefully reviewed through a CDP application process to ensure that the public access to and recreation of this area is not impacted.

**H. Actions in Accordance with Authority Granted to Commission and Staff**

The statutory authority for issuance of this Cease and Desist Order is provided in Section 30810 of the Coastal. The procedures for the issuance of Cease and Desist Orders are described in the Commission's regulations in Sections 13180 through 13188

of Title 14 of the California Code of Regulations. Accordingly, the purpose of this Cease and Desist Order is to order the Faria Beach Homeowners Association to immediately and completely cease from conducting and maintaining unpermitted development on the subject property, and to remove unpermitted boulders, fill, fencing, landscaping, plastic drainage pipes, and signs.

Staff recommends that the Commission issue the following Cease and Desist Order:

**CEASE AND DESIST ORDER  
CCC-04-CD-04, FARIA BEACH HOME OWNERS ASSOCIATION**

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby orders and authorizes the Faria Beach Homeowners Association, their agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as “Respondents”) to cease and desist from undertaking further unpermitted development or maintaining existing unpermitted development on the subject property, including placement of fencing, “private property” and security signs, boulders, landscaping, drainage devices, and top soil and mulch. Accordingly, all persons subject to this order shall fully comply with paragraphs A, B and C as follows.

- A. Immediately and in no event later than 60 days from issuance of this Order cease from all such activities and perform no further unpermitted development at the subject property.
- B. Immediately and in no event later than 60 days from issuance of this Order cease from additional maintenance of any unpermitted development on the subject property including, but not necessarily limited to any fencing, “private property” and security signs, boulders, landscaping, drainage devices, and top soil and mulch, at the subject property until and unless it is authorized through a CDP.
- C. Within 60 days of issuance of this Order, remove all unpermitted boulders, mulch, topsoil, landscaping, drainage devices, fencing, and signs (including, but not necessarily limited to, “private property” and security signs) from the subject property. The unpermitted development shall be disposed of at an appropriate debris disposal site in compliance with all applicable local and state laws. Faria Beach Homeowners Association shall provide the Commission with photographic evidence within 14 days of such removal to verify that the above-unpermitted development was removed from the subject property. Photographs shall be submitted to the Commission no later than 5:00 pm July 26, 2004.

**I. Persons Subject to the Order**

Faria Beach Homeowners Association, and their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

**II. Identification of the Property**

An approximately 500 linear foot strip of open coastline along the seaward side of Old Rincon Highway 1 between 3560 and 3674 Pacific Coast Highway (Old PCH), directly above Mondo’s Cove, in the Faria Beach Community (APN 060-0-380-245), Ventura County.

### **III. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of this Cease and Desist Order, includes the placement of fencing, “private property” and security signs, boulders ranging in size between one to five feet in diameter, mulch, topsoil, landscaping (including non-native and possibly invasive plants and trees), and plastic drainage pipes along the road shoulder on the seaward side of Old PCH and on top of existing revetment above the beach.

### **IV. Effective Date and Terms of the Order**

The effective date of the order is the date the order is issued by the Commission. This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

### **V. Findings**

The order is issued on the basis of the findings adopted by the Commission at the May 2004 hearing, as set forth in the attached document entitled “Recommended Findings for Cease and Desist Order CCC-04-CD-04”.

### **VI. Compliance Obligation**

Strict compliance with the order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the order including any deadline contained in the order will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

### **VII. Deadlines**

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

### **VIII. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the order is issued may file a petition with the Superior Court for a stay of this order.



**IX. Submittal of Documents**

All plans, reports, photographs and any other materials required by this Cease and Desist Order should be sent to:

Aaron McLendon  
California Coastal Commission  
Legal Division  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219  
(415) 904-5220  
FAX (415) 904-5235

With a copy sent to:  
Steve Hudson  
California Coastal Commission  
South Central Coast District  
89 South California Street, Suite 200  
Ventura, CA 93001-2801  
(805) 585-1800  
FAX (805) 641-1732

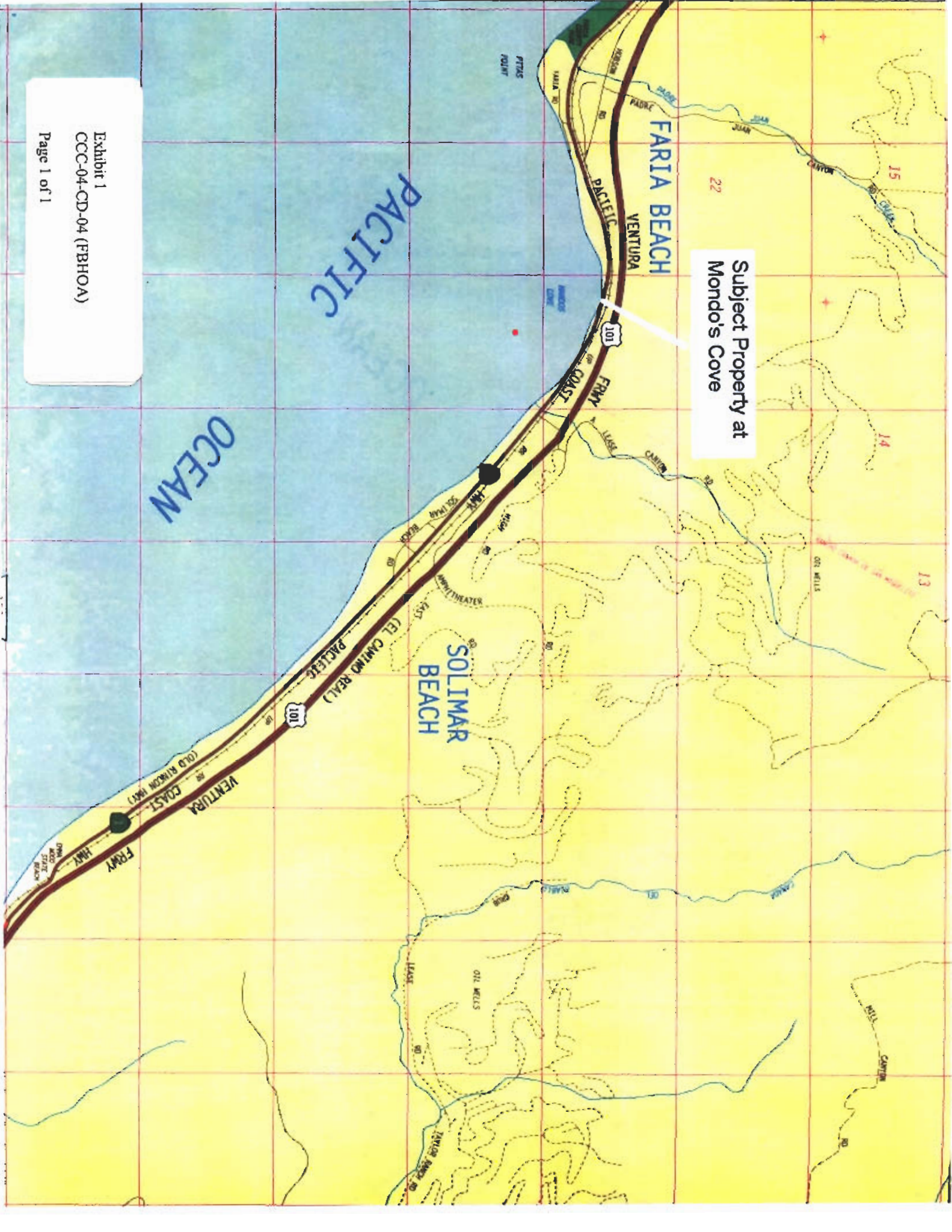
Executed in \_\_\_\_\_ on \_\_\_\_\_, on behalf of the California Coastal Commission.

Peter Douglas, Executive Director

By: \_\_\_\_\_

**CCC-04-CD-03**  
**Exhibit List**

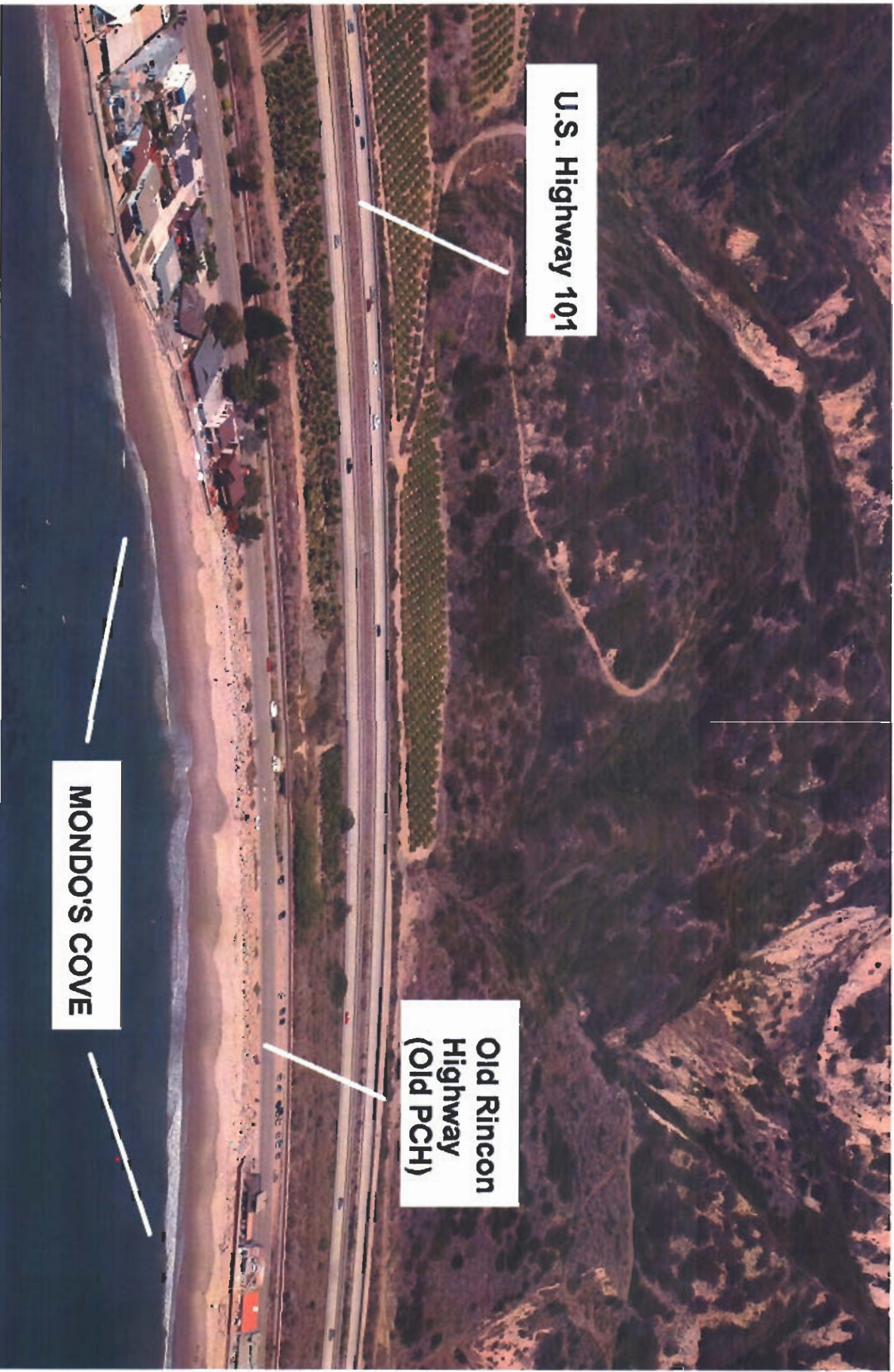
<b>Exhibit Number</b>	<b>Description</b>
1.	Site Map and Location
2.	Project Location
3.	February 13, 2004, NOI for EDCDO
4.	February 26, 2004, EDCDO No. ED-04-CD-01
5.	March 21, 2003, initial violation report
6.	December 26, 2003, violation report
7.	March 23, 2004, notice of violation of 2/26/04 EDCDO
8.	March 20, 2003, conceptual plan for Mondo's Cove by FBHOA
9.	March 1, 2004, letter from J. Roger Myers to Ventura County Planning Department
10.	March 1, 2004, letter from J. Roger Myers to CCC requesting Public Records
11.	November 7, 2003 letter from Steve Bennet, County Supervisor to Caroline Tellez regarding public access to Mondo's Cove.
12.	Photograph of "private property" sign at Mondo's Cove, 4/26/89
13.	Photograph of new "private property" sign at Mondo's Cove, 1/7/04
14.	Photograph taken from inland side of Old PCH showing fencing on upcoast end of Mondo's Cove, 4/13/04
15.	Photograph taken from seaward side of Old PCH showing fencing on downcoast end of Mondo's Cove
16.	Photograph of soil and mulch, 10/9/03
17.	Photograph of construction equipment depositing soil and mulch, 10/9/03
18.	Photograph taken from downcoast end of Mondo's Cove showing unpermitted boulders, topsoil and mulch, and landscaping ("private property" sign in the background), January 2004.
19.	January 28, 1983 photograph showing downcoast portion of the site, demonstrating that there were no "private property" signs in place.
20.	January 28, 1983 photograph showing upcoast portion of the site, demonstrating that there were no "private property" signs in place.
21.	Exhibit taken from <u>Ventura County Beach Study</u> , State of California, Department of Parks and Recreation, June 1978, depicting Surfing area at Mondo's Cove
22.	FBHOA Statement of Defense
23.	February 5, 2004, letter from CCC staff to Ventura County Planning Department
24.	Figure 4, Ventura County LUP, <u>Recreational Areas on the North Coast</u>
25.	Figure 1, Ventura County LUP, <u>Environmentally Sensitive Habitats on the North Coast</u>
26.	Figure 16, Ventura County LUP, <u>Faria Beach Community</u>



Subject Property at  
Mondo's Cove

Exhibit 1  
CCC-04-CD-04 (FBHOA)  
Page 1 of 1





U.S. Highway 101

Old Rincon  
Highway  
(Old PCH)

MONDO'S COVE

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



**SENT VIA FACSIMILE AND  
REGULAR AND CERTIFIED MAIL**

Exhibit 3  
CCC-04-CD-04 (FBHOA)

Page 1 of 7

February 13, 2004

Faria Beach Homeowners Association  
P.O. Box 1548  
Ventura, CA 93002  
(Certified Mail No. 7002 2030 0002 6423 2249)

Roger Haring  
29677 Bouquet Canyon Road  
Saugus, CA 91390-1102  
(Certified Mail No. 7002 2030 0002 6423 2256)

**Subject: Notice Prior to Issuance of Executive Director Cease  
and Desist Order for Violation No. V-4-03-028**

**Location:** Approximately 500 linear feet of undeveloped coastline  
(Mondo's Cove) along the seaward side of Old Rincon  
Highway 1 between 3560 and 3674 Pacific Coast Highway  
(PCH) (APN 060-0-380-245).

**Violation Description:** Unpermitted placement of boulders ranging in size between  
one to five feet in diameter, organic mulch, topsoil, fencing,  
and landscaping (including non-native and possibly invasive  
plants and trees) along the road shoulder adjacent to Old  
Rincon Highway (Old Highway 1) and on top of existing  
revetment, plastic drainage pipes in and through the  
revetment, and "private property" and security signs on the  
revetment above the beach.

Dear Faria Beach Homeowners Association and Dr. Haring:

The purpose of this letter is to give you notice that the Executive Director of the Coastal  
Commission intends to issue a Cease and Desist Order addressing unpermitted  
development on Faria Beach Homeowners Association's property located between  
3560 and 3674 Pacific Coast Highway bordering the seaward shoulder of Old Rincon

Highway (Old PCH) (APN 060-0-380-245). If issued, the Executive Director Cease and Desist Order would direct you to cease and desist from performing or maintaining unpermitted grading, stockpiling, and placement of boulders, fencing, signs, landscaping, and drainage devices.

The development has occurred and continues to be undertaken without the required authorization in a coastal development permit (CDP). Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP (CDP). "Development" is defined by Section 30106 of the Coastal Act and Article 2, Section 8172-1 of the Ventura County LCP as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The unpermitted development clearly constitutes "development" within the meaning of the above-quoted definition and therefore requires a CDP. In addition, unpermitted development blocks public access to Mondo's Cove in Faria Beach and could cause significant damage to coastal resources protected under the Coastal Act.

### **Mondo's Cove**

Mondo's Cove is one of Ventura County's most popular recreational beaches. As you may know, all land seaward of the mean high tide line is public land under California Law. The revetment located seaward of Old Rincon Highway serves as a protective device to lessen the impact that wave run-up may have on the highway. On many days ocean waves break up against the rock revetment. The sea appears to extend in close proximity to the revetment and land seaward of the mean high tide line is public land.

Surfers, kayakers, scuba divers, swimmers, and beach goers alike enjoy the public beach and ocean in this location. Recent photographs demonstrate that thousands of beachgoers come to Mondo's cove on summer weekends. Existing rock revetment placed by the California Department of Transportation when Old Rincon Highway was constructed separates the highway from this beach. This revetment was constructed well before the Coastal Act; however, any additions made to the revetment would require a CDP. The public has historically accessed this beach by walking over the rock revetment from Old Rincon Highway. The public has also historically accessed this beach by walking down steps, which were paved into the existing revetment and located at the south end of the property. It appears that the paved steps were placed on the revetment prior to the Coastal Act.



Walking down the paved steps or crossing the rock revetment across the subject property is the only access point to this stretch of coastline. Placing any structures along or in front of these access points would prohibit the public from enjoying this beach and surfing location as they have done for at least several years. The protection of coastal access and recreation are one of the major policy goals of the Coastal Act (Sections 30210, 30211, 30213, 30220, 30221, 30222, and 30240 of the Coastal Act). This unpermitted development impedes access across the rock revetment and down the paved steps, which impacts coastal access to and recreational uses of this beach.

### **History of the Violation Investigation**

On March 21, 2003, the Commission received a letter alleging that signs were recently installed at Faria Beach in the Mondo's Cove area. On June 5 and June 27, 2003, Commission staff received reports that a surfer was cited for trespassing when he walked over the revetment to get to the beach. The District Attorney's office and Sheriff's Department later dismissed the charges.

On October 9, 2003, the Commission South Central Coast District enforcement officer visited the site and confirmed that several new boulders were placed and topsoil stockpiled on and above the existing rock revetment. Commission staff later confirmed that a CDP from either the Commission or Ventura County was not issued for the development. Staff noted that some of the boulders appeared to be placed as borders for a "planter" structure. At this time staff also confirmed that two plastic culvert pipes were installed along and through the rock revetment. The contractor conducting the development told Commission staff that Dr. Roger Haring of the Homeowners Association hired him to undertake the development.

Commission staff then contacted Dr. Haring (later in the day on October 9) and advised Dr. Haring that the development undertaken required a CDP. Dr. Haring stated that the development was intended to make the site more visually attractive and it was not meant to impede public access. In addition, he stated that the work was experimental and the Home Owners Association was going to observe the development over the winter storm period to see if the landscaping and boulders would wash away. Dr. Haring then asked Commission staff if he could finish the landscaping. Commission staff stated that he could not authorize any development and again advised Dr. Haring that the development required a CDP.

On October 16, 2003, Commission staff met with Dr. Haring and explained to him that he needed to obtain a CDP from Ventura County (as the unpermitted development was located in Ventura County's permitting jurisdiction) and further advised him that the Commission would likely appeal any project approved by Ventura County that negatively affected public access to Mondo's cove since the protection of public access and recreation is a major policy goal of the Coastal Act.<sup>1</sup> Dr. Haring again asked if he

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<sup>1</sup> After certification of local coastal programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section

could complete the work. Commission staff advised Dr. Haring that such development required a CDP and staff could not informally give permission to continue the development without the required application and analysis upon which permitting decisions are made. Staff also stated that the placement of boulders, topsoil, landscaping, and drainage devices in the absence of a permit were constructed in violation of the Coastal Act.

In a telephone conversation on November 12, 2003, Dr. Haring stated that he spoke with the County of Ventura who allegedly told him that the County does not require permits for the work completed at Mondo's, which at this time included the placement of boulders, topsoil, signs, and landscaping. The County's opinion was allegedly based on a sketch of the project, which was faxed to the County by Dr. Haring. In addition, Dr. Haring stated that the HOA intended to also plant approximately 3-foot high shrubs and ice plant.<sup>2</sup>

On January 20, 2004, Commission staff sent the County of Ventura a letter describing the unpermitted development and asking the County if it intends to take action to address the violations of the certified LCP at Mondo's Cove. This letter explained to the County that if the County is unable to take action to enforce the provisions of the LCP or if the County fails to take sufficient action to resolve the violations, the Commission would take responsibility for enforcement of the LCP (pursuant to section 30809(a)(2) and 30810(a)(2) of the Coastal Act). The letter stated that if the County did not respond by January 23, 2004, the Commission would assume that the County declined to take action. The County did not respond to the January 20<sup>th</sup> letter in writing.

On February 2, 2004, Commission staff contacted Christopher Stevens, Ventura County Planning Director, asking the County 1) whether they were going to take enforcement action, and 2) whether the County had issued any permits or permit exemptions for the development at Mondo's Cove.

On February 3, 2004, Mr. Stevens left a voicemail message for Commission staff stating that 1) the County was declining to take enforcement action regarding the unpermitted development; 2) the County did not grant any permits, permit exemptions, or take any action whatsoever regarding the unpermitted development; 3) prior to the January 20<sup>th</sup> letter, the County was not aware that development had occurred at Mondo's cove; and 4) after review of the unpermitted development after-the-fact, the County did not believe that the development required a permit. In a February 5, 2004 letter, Commission staff

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30603). Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, in a sensitive coastal resource area or located within 100 feet of any wetland, estuary, or stream.

<sup>2</sup> This additional work described by Dr. Haring is also considered development under the Coastal Act and the County LCP and would require a CDP.



confirmed that the County was declining to take enforcement action regarding the development at Mondo's Cove. In addition, the letter indicated that Commission staff had reviewed the Ventura County LCP and determined that no policies or standards in the LCP exempt such development from the permitting process and asked the County to contact the Commission if they disagreed with the analysis of Commission staff. The County did not respond to this letter. Therefore, the County's LCP does not authorize the development at Mondo's Cove to proceed without a CDP from the County of Ventura.

### **Executive Director Cease and Desist Order Process**

Section 30809(a) of the California Coastal Act (Division 20 of the Public Resource Code) authorizes the Executive Director to issue an order directing a person to cease and desist if that person has undertaken, or is threatening to undertake, any activity that may require a permit without securing a permit. The placement of stockpiled material, boulders, signs, drainage devices, landscaping, and fencing on the subject property constitute development which requires a CDP. Since this development was performed in an area in which the County of Ventura has jurisdiction to issue permits under the Coastal Act (there is a certified Local Coastal Program for this area of the City of Ventura), the performance of this development requires a CDP from the County. The County has not issued a permit for the development at Mondo's Cove and the property owner has not applied for a permit to authorize the development. As discussed above, on October 9 and 16 and November 12, 2003, Commission staff advised you that the unpermitted development required a CDP. Work continued after Commission staff's advisement of the necessity for a CDP. As addressed above, the County of Ventura declined to take action to enforce their LCP. Therefore, pursuant to Section 30809(a)(2), the Commission is taking action to enforce the requirements of the Ventura County LCP.

If issued, the Executive Director Cease and Desist Order will direct you to cease and desist from undertaking further development or maintaining existing unpermitted development on the subject property. A violation of a Cease and Desist Order may subject the violator to additional fines, subject to Sections 30820, 30821.6, and 30822 of the Coastal Act (PRC Division 20 §30809(b)(3)).

Section 30809(b) of the Coastal Act states:

*The cease and desist order shall be issued only if the person or agency has failed to respond in a satisfactory manner to an oral notice given in person or by telephone, followed by a written confirmation, or a written notice given by certified mail or hand delivered to the landowner or the person performing the activity.*

Section 13180(a) of Title 14 Division 5.5 of the California Code of Regulations defines the term "satisfactory manner" with regard to Section 30809(b) of the Coastal Act as being, in part, "a response which is made in the manner and within the timeframe

specified in the notice." **To prevent the issuance of the Executive Director Cease and Desist Order to you, you must provide assurances by telephone by 5:00 pm, February 17, 2004 and confirmed in writing by 5:00 pm February 18, 2004 (this confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation via facsimile to Aaron McLendon at (415) 904-5235 and regular mail at the address listed on the letterhead) that:**

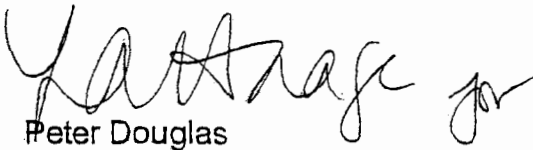
1. Faria Beach Homeowners Association (who conducted the unpermitted development and to whom this letter will be sent certified mail) will immediately and completely cease from all such activities and commit to perform no further unpermitted development at the subject property.
2. Faria Beach Homeowners Association will immediately and completely cease from additional maintenance of any unpermitted development on the subject property including, but not necessarily limited to any grading, stockpiling of material, landscaping, fencing, placement of signs, construction and/or use of drainage devices, at the subject property until and unless it is authorized through a CDP.
3. By February 19, 2004, Faria Beach Homeowners Association shall remove unpermitted fencing, and signs (including, but not necessarily limited to, security and private property signs) from the subject property. The unpermitted development shall be disposed of at an appropriate debris disposal site in compliance with all applicable local and state laws. Faria Beach Homeowners Association shall provide the Commission with photographic evidence that the above-unpermitted development was removed from the subject property. Photographs shall be submitted to the Commission's San Francisco office to the attention of Aaron McLendon at the address on this letterhead no later than 5:00 pm February 23, 2004.
4. By February 25, 2004, Faria Beach Homeowners Association shall remove unpermitted boulders, mulch, topsoil, landscaping, and drainage devices from the subject property. The unpermitted development shall be disposed of at an appropriate debris disposal site in compliance with all applicable local and state laws. Faria Beach Homeowners Association shall provide the Commission with photographic evidence that the above-unpermitted development was removed from the subject property. Photographs shall be submitted to the Commission's San Francisco office to the attention of Aaron McLendon at the address on this letterhead no later than 5:00 pm February 27, 2004.

The Executive Director Cease and Desist Order may be subject to such terms and conditions as the Executive Director may determine are necessary to avoid irreparable injury to any area within the jurisdiction of the Commission, pending action by the Commission under Section 30810 and 30811 of the Coastal Act (which grants the Commission the authority to issue Cease and Desist and Restoration Orders).

Executive Director Cease and Desist Orders issued under Section 30809 of the Coastal Act are effective upon issuance, and last for a period of 90 days. These Executive Director Cease and Desist Orders may also be followed up by a Cease and Desist Order or Restoration Order or both issued by the Commission pursuant to Section 30810 and 30811 of the Coastal Act, which will have a longer effective period.

We look forward to your cooperation in this matter. If you have any questions regarding this letter or the enforcement case, please call Aaron McLendon at (415) 904-5220 or send correspondence to the attention of Mr. McLendon at the address listed on the letterhead.

Sincerely,



Peter Douglas  
Executive Director

cc: Lisa Haage, Chief of Enforcement, CCC  
Aaron McLendon, Statewide Enforcement Analyst, CCC  
Sandy Goldberg, Staff Counsel, CCC  
Steve Hudson, Southern CA Enforcement Supervisor, CCC

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



**SENT VIA REGULAR AND CERTIFIED MAIL  
AND FACSIMILE (to Dr. Haring)**

February 26, 2004

Faria Beach Homeowners Association  
P.O. Box 1548  
Ventura, CA 93002  
(Certified Mail No. 7002 2030 0002 6423 2249)

Roger Haring  
29677 Bouquet Canyon Road  
Saugus, CA 91390-1102  
(Certified Mail No. 7002 2030 0002 6423 2256)

**Subject: Executive Director Cease and Desist Order No. ED-04-CD-01 and  
Notice of Intent to Commence Commission Cease and Desist Order  
Proceedings**

Date Issued: February 26, 2004

Expiration Date: May 25, 2004

Violation File No.: V-4-03-028

Property Location: Approximately 500 linear feet of undeveloped coastline (Mondo's Cove) along the seaward side of Old Rincon Highway 1 between 3560 and 3674 Pacific Coast Highway (PCH) (APN 060-0-380-245).

Alleged Coastal Act Violation: Unpermitted placement of boulders ranging in size between one to five feet in diameter, organic mulch, topsoil, fencing, and landscaping (including non-native and possibly invasive plants and trees) along the road shoulder adjacent to Old Rincon Highway (Old Highway 1) and on top of existing revetment, plastic drainage pipes in and through the revetment, and "private property" and security signs on the revetment above the beach.

Exhibit 4  
CCC-04-CD-04 (FBHOA)

I. ORDER

Pursuant to my authority under California Public Resources Code (PRC) Section 30809, I hereby order you, as the legal owners of the property identified below, your employees, agents and contractors, and any other persons acting in concert with you to cease and desist from undertaking further development or maintaining existing unpermitted development on the subject property, including grading, stockpiling of top soil and mulch, and placement of boulders, fencing, signs, landscaping, and drainage devices. The Executive Director Cease and Desist Order is subject to the following terms and conditions to avoid irreparable injury to the subject property pending action by the Commission under Section 30810 and 30811 of the Coastal Act:

1. Faria Beach Homeowners Association (who conducted the unpermitted development and to whom this letter will be sent certified mail) shall immediately and completely cease from all such activities and shall not perform further unpermitted development at the subject property.
2. Faria Beach Homeowners Association shall immediately and completely cease from additional maintenance of any unpermitted development on the subject property including, but not necessarily limited to any grading, stockpiling of material, landscaping, fencing, placement of signs, construction and/or use of drainage devices, at the subject property until and unless it is authorized through a CDP.
3. By March 5, 2004, Faria Beach Homeowners Association shall remove unpermitted boulders, mulch, topsoil, landscaping, drainage devices, fencing, and signs (including, but not necessarily limited to, security and private property signs) from the subject property. The unpermitted development shall be disposed of at an appropriate debris disposal site in compliance with all applicable local and state laws. Faria Beach Homeowners Association shall provide the Commission with photographic evidence that the above-unpermitted development was removed from the subject property. Photographs shall be submitted to the Commission's San Francisco office to the attention of Aaron McLendon at the address on this letterhead no later than 5:00 pm March 9, 2004.

II. IDENTIFICATION OF THE PROPERTY

The property that is the subject of this cease and desist order is approximately 500 linear feet of undeveloped coastline (Mondo's Cove) along the seaward side of Old Rincon Highway 1 between 3560 and 3674 Pacific Coast Highway (PCH) (APN 060-0-380-245).

### III. DESCRIPTION OF ACTIVITY

The activity that is the subject of this order consists of the unpermitted placement of boulders ranging in size between one to five feet in diameter, organic mulch, topsoil, fencing, and landscaping (including non-native and/or invasive plants and trees) along the road shoulder adjacent to Old Rincon Highway (Old Highway 1) and on top of existing revetment, plastic drainage pipes in and through the revetment, and "private property" and security signs on the revetment above the beach.

### IV. FINDINGS

The development has occurred and continues to be undertaken without the required authorization in a coastal development permit (CDP). Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP (CDP). "Development" is defined by Section 30106 of the Coastal Act and Article 2, Section 8172-1 of the Ventura County LCP as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The unpermitted development clearly constitutes "development" within the meaning of the above-quoted definition and therefore requires a CDP. In addition, unpermitted development blocks public access to Mondo's Cove in Faria Beach and could cause significant damage to coastal resources protected under the Coastal Act and the County's LCP.

Mondo's Cove is one of Ventura County's most popular recreational beaches. All land seaward of the mean high tide line is public land under California Law. The revetment located seaward of Old Rincon Highway serves as a protective device to lessen the impact that wave run-up may have on the highway. On many days ocean waves break up against the rock revetment. The sea appears to extend in close proximity to the revetment and land seaward of the mean high tide line is public land.

Surfers, kayakers, scuba divers, swimmers, and beach goers alike enjoy the public beach and ocean in this location. Recent photographs demonstrate that thousands of beachgoers come to Mondo's cove on summer weekends. Existing rock revetment placed by the California Department of Transportation when Old Rincon Highway was constructed separates the highway from this beach. This revetment was constructed well before the Coastal Act; however, any additions made to the revetment would require a CDP. The public has historically accessed this beach by walking over the rock revetment from Old Rincon Highway. The public has also historically accessed this

beach by walking down paved "steps", which were grouted into the existing revetment at the south end of the property, enabling easier ascent and descent of the rock revetment. It appears that the paved steps were placed on the revetment prior to the Coastal Act.

Walking down the "steps" or crossing the rock revetment across the subject property is the only access point to this stretch of coastline. Placing any structures along or in front of these access points would prohibit the public from enjoying this beach and surfing location as they have done for at least several years. The protection of coastal access and recreation are one of the major policy goals of the Coastal Act (Sections 30210, 30211, 30213, 30220, 30221, 30222, and 30240 of the Coastal Act, as incorporated by the County's LCP). This unpermitted development impedes access across the rock revetment and down the paved steps, which impacts coastal access to and recreational uses of this beach.

On March 21, 2003, the Commission received a letter alleging that signs were recently installed at Faria Beach in the Mondo's Cove area. Commission staff has confirmed that the signs are a violation through comparing historical photographs and conducting site visits to the subject property. The placement of new signs or the replacement of previously existing signs constitutes development that requires a CDP and is not exempt under and statutes of the LCP). On June 5 and June 27, 2003, Commission staff received reports that a surfer was cited for trespassing when he walked over the revetment to get to the beach. The District Attorney's office and Sheriff's Department later dismissed the charges.

On October 9, 2003, the Commission South Central Coast District enforcement officer visited the site and confirmed that several new boulders were placed and topsoil stockpiled on and above the existing rock revetment. At this time, Commission staff told the contractor conducting the unpermitted work to stop. The contractor agreed to stop work. Commission staff later confirmed that a CDP from either the Commission or Ventura County was not issued for the development. Staff noted that some of the boulders appeared to be placed as borders for a "planter" structure. At this time staff also confirmed that two plastic culvert pipes were installed along and through the rock revetment. The contractor conducting the development told Commission staff that Dr. Roger Haring of the Homeowners Association hired him to undertake the development.

Commission staff then contacted Dr. Haring (later in the day on October 9) and advised Dr. Haring that the development undertaken required a CDP. Dr. Haring stated that the development was intended to make the site more visually attractive and it was not meant to impede public access. In addition, he stated that the work was experimental and the Home Owners Association was going to observe the development over the winter storm period to see if the landscaping and boulders would wash away. Dr. Haring then asked Commission staff if he could finish the landscaping. Commission staff stated that he could not authorize any development and again advised Dr. Haring that the development required a CDP.

On October 16, 2003, Commission staff met with Dr. Haring and explained to him that he needed to obtain a CDP from Ventura County (as the unpermitted development was located in Ventura County's permitting jurisdiction) and further advised him that the Commission would likely appeal any CDP for a project approved by Ventura County that negatively affected public access to Mondo's cove since the protection of public access and recreation is a major policy goal of the Coastal Act.<sup>1</sup> Dr. Haring again asked if he could complete the work. Commission staff advised Dr. Haring that such development required a CDP and staff could not informally give permission to continue the development without the required application and analysis upon which permitting decisions are made. Staff also stated that the placement of boulders, topsoil, landscaping, and drainage devices in the absence of a permit were constructed in violation of the Coastal Act.

In a telephone conversation on November 12, 2003, Dr. Haring stated that he spoke with the County of Ventura who allegedly told him that the County does not require permits for the work completed at Mondo's, which at this time included the placement of boulders, topsoil, signs, and landscaping. The County's opinion was allegedly based on a sketch of the project, which was faxed to the County by Dr. Haring. In addition, Dr. Haring stated that the HOA intended to also plant approximately 3-foot high shrubs and ice plant.<sup>2</sup>

On January 20, 2004, Commission staff sent the County of Ventura a letter describing the unpermitted development and asking the County if it intends to take action to address the violations of the certified LCP at Mondo's Cove. This letter explained to the County that if the County is unable to take action to enforce the provisions of the LCP or if the County fails to take sufficient action to resolve the violations, the Commission would take responsibility for enforcement of the LCP (pursuant to section 30809(a)(2) and 30810(a)(2) of the Coastal Act). The letter stated that if the County did not respond by January 23, 2004, the Commission would assume that the County declined to take action. The County did not respond to the January 20<sup>th</sup> letter in writing.

On February 2, 2004, Commission staff contacted Christopher Stevens, Ventura County Planning Director, asking the County 1) whether they were going to take enforcement action, and 2) whether the County had issued any permits or permit exemptions for the development at Mondo's Cove.

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<sup>1</sup> After certification of local coastal programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, in a sensitive coastal resource area' or located within 100 feet of any wetland, estuary, or stream.

<sup>2</sup> This additional work described by Dr. Haring is also considered development under the Coastal Act and the County LCP and would require a CDP.



On February 3, 2004, Mr. Stevens left a voicemail message for Commission staff stating that 1) the County was declining to take enforcement action regarding the unpermitted development; 2) the County did not grant any permits, permit exemptions, or take any action whatsoever regarding the unpermitted development; and 3) prior to the January 20<sup>th</sup> letter, the County was not aware that development had occurred at Mondo's cove. In a February 5, 2004 letter, Commission staff confirmed that the County was declining to take enforcement action regarding the development at Mondo's Cove. Commission staff determined that no policies or standards in the LCP exempt such development from the permitting process and the County's LCP does not authorize the development at Mondo's Cove to proceed without a CDP from the County of Ventura.

The placement of stockpiled material, boulders, signs, drainage devices, landscaping, and fencing on the subject property constitute development, which requires a CDP. On October 9 and 16 and November 12, 2003, Commission staff advised you that the unpermitted development required a CDP. Work continued after Commission staff's advisement of the necessity for a CDP. Since Commission staff advised you of the necessity to obtain a CDP for the subject development, Commission staff has determined that the unpermitted development is a knowing and intentional violation of the permit requirements of the Coastal Act and the Ventura County LCP.

The Executive Director of the Coastal Commission sent you a Notice Prior to Issuance of an Executive Director Cease and Desist Order (NOI). The NOI states, "To prevent the issuance of the Executive Director Cease and Desist Order to you, you must provide assurances by telephone by 5:00 pm, February 17, 2004 and confirmed in writing by 5:00 pm February 18, 2004... and followed by a written confirmation via facsimile...and regular mail... that [1) Faria Beach Homeowners Association will immediately and completely cease from all such activities and commit to perform no further unpermitted development, 2) that they will immediately and completely cease from additional maintenance of any unpermitted development, 3) by February 19, 2004, Faria Beach Homeowners Association shall remove unpermitted fencing, and signs, and 4) by February 25, 2004, Faria Beach Homeowners Association shall remove unpermitted boulders, mulch, topsoil, landscaping, and drainage devices from the subject property]."

On February 17, 2004, Dr. Haring contacted Commission staff but did not indicate that he or the Faria Beach HOA would provide assurances that either party would meet the deadlines provided in the NOI. On February 18, Commission staff contacted Dr. Haring and discussed the enforcement action and the NOI. Dr. Haring stated that he is the director of the HOA and acting as a project manager for the development at Mondo's Cove. He stated that he did not have the authority to remove the development and that he was unable to meet the requirements of the NOI at this time because the HOA must meet to discuss the issue and decide what action to take. Dr. Haring indicated that the HOA may remove some or all of the development or pursue other options but he cannot speak for the entire Association. Neither Dr. Haring nor the HOA provided assurances by February 17, 2004 that work would stop and unpermitted development would be

removed. In addition, neither Dr. Haring nor the HOA removed the specific unpermitted development by February 19 and February 25, 2004, respectively.

The Executive Director has determined that you have undertaken and continue to undertake development that requires a permit without first securing a permit. The Executive Director has also determined that Dr. Haring and the Faria HOA failed to respond to the NOI in a "satisfactory manner" by not providing assurances that work would stop and unpermitted development would be removed by the deadlines given in the NOI. Therefore the Executive Director is issuing an EDCDO to direct you to cease and desist from undertaking further development or maintaining existing unpermitted development on the subject property.

### **Notice of Intent to Commence Commission Cease and Desist Order Proceedings**

By this Executive Director Cease and Desist Order, I am also notifying you of my intent to commence proceedings for issuance by the California Coastal Commission of a Cease and Desist Order to direct you to cease and desist from undertaking further development or maintaining existing unpermitted development on the subject property. The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

*If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings since unpermitted development has occurred at the subject property. Section 30600(a) of the Coastal Act, as incorporated by the County's LCP states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit (CDP). "Development" is defined by Section 30106 of the Coastal Act and Section 8172-1 of the Ventura County Coastal Zoning Ordinance (the implementation portion of the County's LCP) as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The above-described unpermitted development constitutes "development" and therefore requires a CDP. A CDP was not issued to authorize the subject unpermitted development.

For these reasons, the criteria of Section 30810(a) of the Coastal Act have been met and I am sending this letter to initiate proceedings for the Commission to determine whether to issue a Cease and Desist Order.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act.

In accordance with Sections 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, no later than March 17, 2004.**

In addition to the procedures for proposing and issuing enforcement orders that are discussed in this letter, Section 30812 of the Coastal Act allows the Executive Director, after providing notice and opportunity for a hearing, to record a Notice of Violation of the Coastal Act against your property. The Commission staff will send you a subsequent notice if it intends to proceed with recordation of a Notice of Violation in this matter.

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which the violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

The Commission staff intends to schedule the hearings for the Cease and Desist Order during the Commission meeting that is scheduled for April 14-16, 2004 in Santa Barbara. If you have any questions regarding this letter or the enforcement case, please call Aaron McLendon at (415) 904-5220 or send correspondence to his attention at the address listed on the letterhead.

V. COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order may result in the imposition of civil penalties up to Six Thousand Dollars (\$6,000) per day for each day in which such compliance failure persists and other such penalties and relief as provided for in the Coastal Act. In addition, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in section 30812 of the Coastal Act, to record a Notice of Violation against your property.

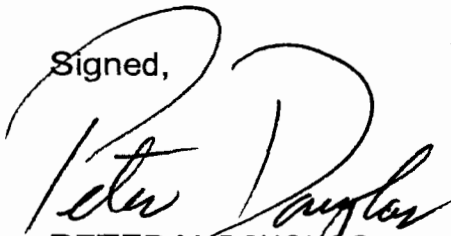
VI. APPEAL

Pursuant to PRC section 30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court seeking a stay of this order.

Should you have any questions regarding this matter, please contact Mr. Aaron McLendon, Statewide Enforcement Analyst, at (415) 904-5220.

Executed at San Francisco, California on February 26, 2004.

Signed,



PETER M. DOUGLAS  
Executive Director  
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC  
Aaron McLendon, Statewide Enforcement Analyst, CCC  
Sandy Goldberg, Staff Counsel, CCC  
Steve Hudson, Southern CA Enforcement Supervisor, CCC

Attachment: Statement of Defense Form

3/21/03

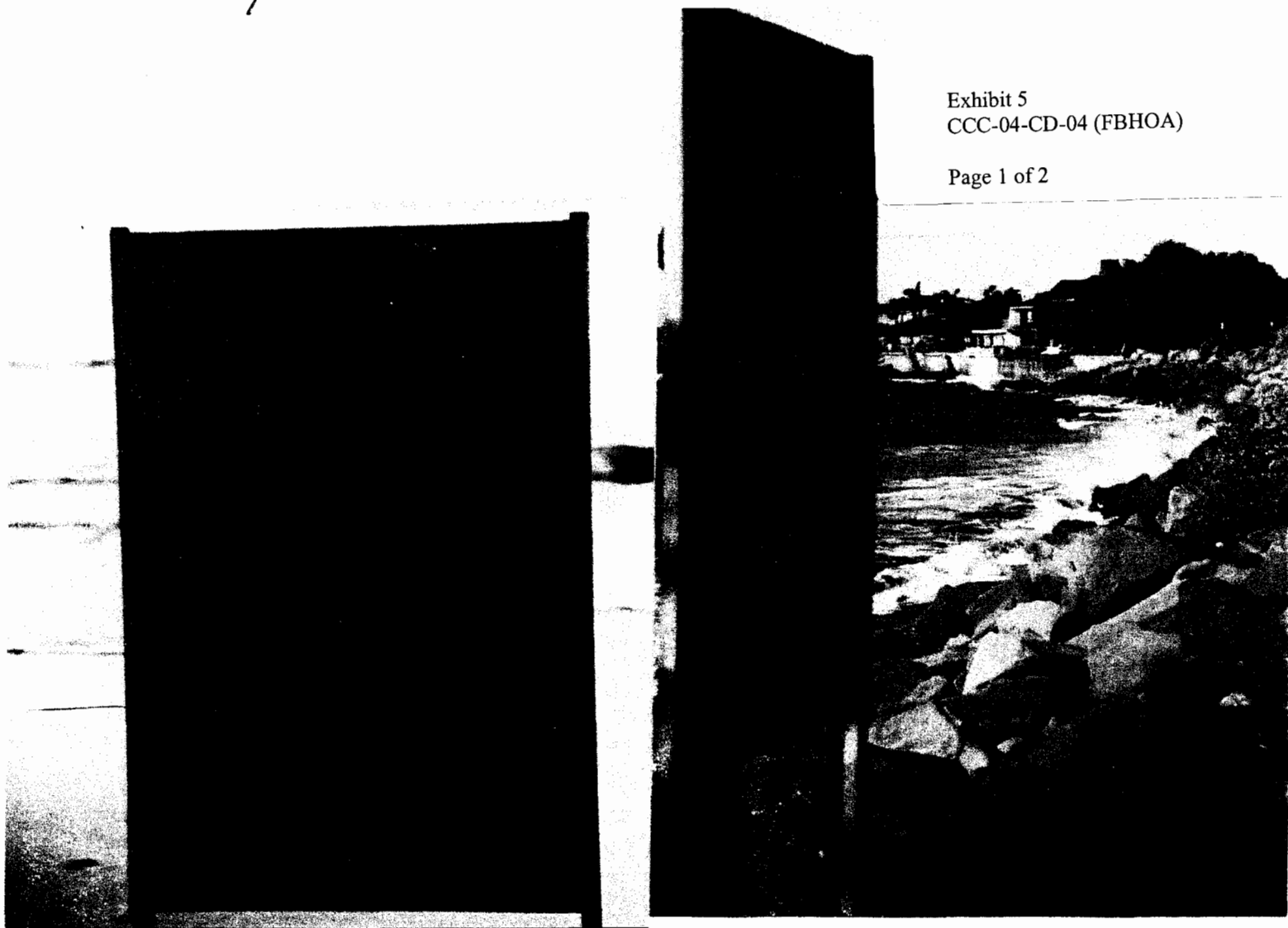
## FARZIA BEACH/MONDO'S AREA

THESE ARE PHOTOS OF A SIGN RECENTLY ERECTED ON THE ROADSIDE OF FARZIA/MONDOS BEACH. EVIDENTLY THE HOMEOWNERS THERE BELIEVE THAT THEY HAVE THE RIGHT TO RESTRICT ACCESS TO THIS BEACH.

AS IS EVIDENCED IN THESE PHOTOS THE OCEAN VIRTUALLY SPLASHES UPON THE ROAD (THE PUBLIC ROAD)

Exhibit 5  
CCC-04-CD-04 (FBHOA)

Page 1 of 2



AT HIGH TIDE.

THIS BEACH IS A SAFE BEACH FOR CHILDREN AND FAMILIES. IT IS FREQUENTED BY A STEADY AND WHOLESOME GROUP OF BEACH GOERS. THE ACCESS IS CONVENIENT AND SAFE FOR ALL.

THE THREATENING TONE OF THE SIGN POSTED SEEMS INCONGRUENT WITH THE NATURE OF PUBLIC ACCESS. WE HOPED THAT THE COASTAL COMMISSION COULD REVIEW THIS SITUATION AND EFFORT TO PRESERVE THE PUBLIC'S USE OF THIS BEACH. REMOVING THE SIGN IF POSSIBLE. THANK YOU.

3/21/03

## FAR A BEACH / MONDO'S AREA

NO TRESPASSING  
SIGN POSTED  
HERE

This photo illustrates the proximity of the county road to the Rip/Rap. It is in this area that most people access the beach. There is less than 10' of ground between asphalt and rock.



It would seem that all this area would fall under the jurisdiction of those that maintain the county road and its easements and then the Coastal Zone that operates within the bounds of the mean high tide. Suggesting that there simply could not be a privately owned strip of land between road and sea.

NO TRESPASSING  
SIGN POSTED  
HERE.

**December 26<sup>th</sup>, 2003**  
**Attention Tom Sinclair &**  
**Associates working on the**  
**Faria Beach/ Mondos beach access issue.**

A new development has transpired over the Christmas holiday that is distressing to all that frequent and enjoy Mondos beach.

Someone, most probably the Faria beach homeowners association, has gone to considerable expense and effort to physically prohibit public access to the beach.

Preexisting burms have been leveled and large boulders & landscape materials have been strategically placed to impede anyone's passage to the beach. In addition, and most grievous, is the installation of actual fence posts, @ the south end of the cove, upon which an impenetrable barrier has been firmly affixed and flagged.

Coupling this most recent affront to public access with the "illegally" posted PRIVATE PROPERTY signs seems like enough fodder to suggest that it might be time for the Coastal Commission to take a more prominent stance on this issue.

Unfortunately, the fact is that the Faria Homeowners have escalated their attempt to privatize Mondos beach. They have migrated from the confines of the County Court room to actually constructing physical barricades all the while expanding their behavior of illegal & illicit intimidation of the law-abiding, tax-paying, beach going public.

It is doubtful that the people behind these actions will stop until they are legally forced to. Without



**opposition they will continue to cordon off that which is not theirs to control.**

**Although we had all hoped that this issue had resolved itself and faded away with the dismissed trespassing case of James McClelland, it is evident that this situation is still very much alive and worsening by the day.**

**For this reason, we request your help. As guardians of the public's access, your attention and visible presence in this matter is greatly needed.**

**Time is of the essence.**

**(It would be far better to stop & minimize their damage now, than to be bound to the efforts & expense of undoing their deeds later.)**

**We would appreciate it if you would please drive by the beach and verify what we have said for yourselves, then let us know your thoughts and advise us as to how we can best help to protect the public's access to this precious beach.**

**Thank you,**



## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



**SENT VIA FACSIMILE (to Dr. Haring and Mr. Myers)  
AND REGULAR AND CERTIFIED MAIL**

March 23, 2004

Exhibit 7  
CCC-04-CD-04 (FBHOA)

Page 1 of 3

Faria Beach Homeowners Association  
P.O. Box 1548  
Ventura, CA 93002  
(Certified Mail No. 7002 2030 0002 6423 2133)

Roger Haring  
29677 Bouquet Canyon Road  
Saugus, CA 91390-1102  
(Certified Mail No. 7002 2030 0002 6423 2140)

J. Roger Myers  
5425 Everglades Street  
P.O. Box 7209  
Ventura, CA 93006  
(Certified Mail No. 7002 2030 0002 6423 2157)

Subject: **Violation of Executive Director Cease and Desist Order  
No. ED-04-CD-01**

Dear Faria Beach Homeowners Association, Dr. Haring, and Mr. Myers:

This letter serves as formal notification that you are not in compliance with Executive Director Cease and Desist Order No. ED-04-CD-01 (EDCDO), which was sent to you on February 26, 2004. The EDCDO required:

1. Faria Beach HOA to immediately and completely cease from all activities and to not perform further unpermitted development at the subject property.
2. Faria Beach HOA to immediately and completely cease from additional maintenance of any unpermitted development on the subject property including, but not necessarily limited to any grading, stockpiling of material, landscaping, fencing, placement of signs, construction and/or use of drainage devices, at the subject property until and unless it is authorized through a CDP.

3. By March 5, 2004, Faria Beach HOA to remove unpermitted boulders, mulch, topsoil, landscaping, drainage devices, fencing, and signs (including, but not necessarily limited to, security and private property signs) from the subject property. The unpermitted development was to be disposed of at an appropriate debris disposal site in compliance with all applicable local and state laws.
4. Faria Beach HOA to provide the Commission with photographic evidence that the above-unpermitted development was removed from the subject property. Photographs were to be submitted to the Commission's San Francisco office to the attention of Aaron McLendon no later than 5:00 pm March 9, 2004.

Faria Beach HOA did not comply with any of the requirements of the EDCDO.

Although we did not receive any communications from Faria Beach HOA regarding the EDCDO prior to these deadlines, we received a copy of a March 1, 2004 letter from Mr. Myers, on behalf of the Faria Beach HOA, to Chris Stephens, Ventura County Planning Director. In this letter, Mr. Myers stated, "While we do not agree with the factual or legal allegations of the Order, in order to resolve the matter, we would like to formally apply for a Coastal Development Permit for the landscaping." An intent to submit a Coastal Development Permit (CDP) to retain some or all of the unpermitted development at some time in the future does not relieve you from the obligation to comply with the EDCDO that addresses development being performed without a CDP, which is a requirement of the Coastal Act. Any such after-the-fact CDP application does not alter the fact that there has been a Coastal Act violation, and that Faria Beach HOA is in violation of the EDCDO.

We also note that in addition to landscaping, the EDCDO also addresses unpermitted placement of boulders, drainage devices, fencing, and signs on the subject property. Moreover, we understand that Faria Beach HOA has not yet submitted a CDP application. Please send a copy of any permit application that Faria Beach HOA submits or has submitted to the County to the attention of Aaron McLendon at the address listed on the letterhead.

We also received your Statement of Defense on March 16, 2004 regarding the Notice of Intent to commence Commission Cease and Desist Order proceedings (NOI). This, however, does not obviate the need to comply with the EDCDO.

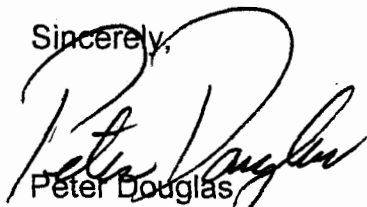
In addition, we received a letter from Mr. Myers, as Chair of the Faria Beach HOA, dated March 1, 2004 that requested public records related to the EDCDO and acknowledges that the EDCDO was received. On March 8, 2004, we sent the public records that were requested.

We are informed and believe that, as of this date, Faria Beach HOA has not removed the unpermitted development as required by #3 of the EDCDO quoted above. Faria

Beach HOA has not submitted the photographic evidence of removal required in #4 of the EDCDO quoted above.

Accordingly, Faria Beach HOA is in violation of the EDCDO. The Commission may seek penalties under Section 30820 and/or 30821.6 of the Coastal Act, including daily penalties for each day in which Faria Beach HOA fails to remove the unpermitted development, as required by the EDCDO. If you would like to discuss resolving the matters raised in the EDCDO and the NOI, please contact Aaron McLendon in the Commission's San Francisco office at (415) 904-5220 or at the address listed on the letterhead.

Sincerely,



Peter Douglas  
Executive Director

cc: Lisa Haage, Chief of Enforcement, CCC  
Aaron McLendon, Statewide Enforcement Analyst, CCC  
Sandy Goldberg, Staff Counsel, CCC  
Steve Hudson, Southern CA Enforcement Supervisor, CCC

**Faria Beach Homeowners Association**  
Rough Draft Mondo's Beach Management and Beautification 03/2003

ROGER D. HARRIS  
(661) 296-7201 Hm  
(661) 259-8251



**CONCEPTUAL PLAN**

P  
A  
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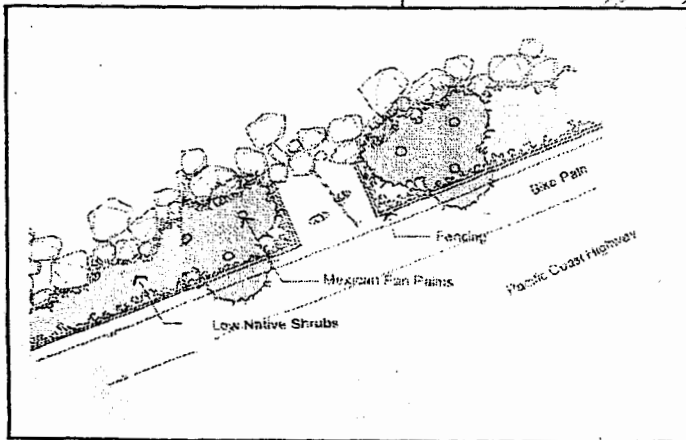
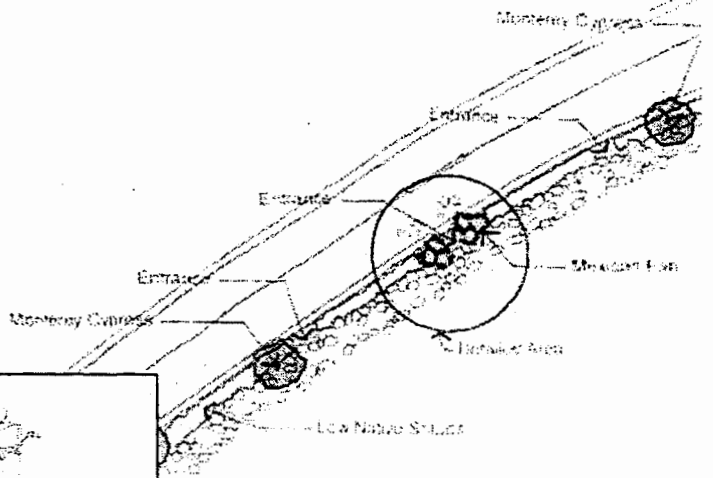


Exhibit 8  
CCC-04-CD-04 (FBHOA)

Page 1 of 6

## Background

Faria Beach Homeowners Association (FHOA) desires to work in partnership with the County of Ventura to balance the public, private and environmental interests as they relate to the Faria Beach Homeowners property identified as Parcel B / Mondo's Beach.

In the last two years, we have seen exponential growth in both public and commercial access to the Mondo's beach area of the Faria Beach Colony. Safety, security, environmental and quality of life concerns by the residence and owners of the property are prompting immediate planning and action. Over the last several years, the homeowners have budgeted and undertaken landscaping improvements to the area, but feel the task is larger than that. We wish to implement a plan that encompasses the necessary public and private agencies to the betterment of this special coastal area.

A comprehensive plan sponsored by the County of Ventura and FHOA would help facilitate cooperation and funding across the various County departments, South Pacific Railroad, Caltrans and any potential conservancy funding sources.

## History of Community

- Founded Early 1900 Manual Faria
- Farming Families• 1920's Summer Camp
- 1930's Leased Summer Cabins
- 1980's Homeowners Association Created
- 1980's Donated Ventura County Park (Faria Park)

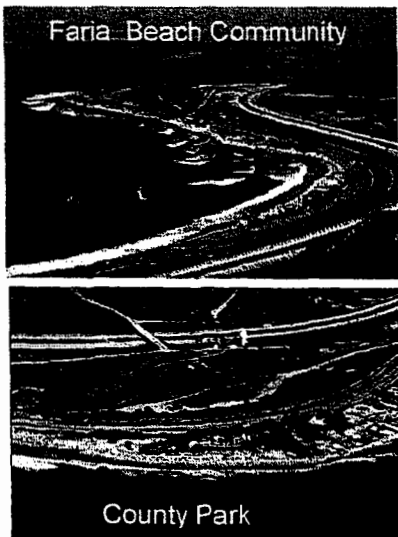


Exhibit 8  
CCC-04-CD-04 (FBHOA)

Page 2 of 6

## List of Concerns and Plan of Action Outline

### Access

Access to the beach is very dangerous at present. There are no ramps or stairs present. The homeowners feel a safe and strategically placed ramp or stair would alleviate a major concern. It would also channel the public through one central access point where the crosswalk, trash, and restroom facilities could be located.

#### Access Safety and Liability

Access Safety is the number one issue facing the homeowners. We strongly feel that another summer of women and children clambering down rock revetment is an unacceptable liability exposure to the homeowners.

*Plan of Action: The Homeowners are open to discuss dedicated access to Mondo's beach as long as it is part of an overall structured management plan encompassing the concerns of the owners. Short-term, we need the County's support for policing existing commercial schools and addressing safety concerns. Long-term, we feel the best and most expeditious approach would be for the County to take a lead position in coordinating support and potential funding sources for dedicated access through the Coastal Conservancy, Coastal Commission, or any other public or private agency.*

### Environmental Management

Overuse is an issue and needs to be address through a solid management plan supported by limiting the parking times and zones in the immediate area as well as opening up additional parking times and zones along the coast that are currently restricting access.

#### Trash Collection

Permanent Trash cans would allow the public to dispose of waste. The concern is that this needs to be done in such a way as to avoid vandalism, and unsightliness. As part of a central point of beach access, and overall management plan this would be accomplished without having a negative impact.

#### Overcrowding

With a balanced plan for available parking at Mondo's and surrounding coastal areas, we can avoid the negative impact of over use on this delicate tidal zone.



Summer Day At Mondo's

*Plan of Action: Work with County on development of designated parking areas and time zones. Enforce existing non commercial zoning. Review funding for ongoing maintenance and disposal of trash and human waste.*

Exhibit 8  
CCC-04-CD-04 (FBHOA)

Page 3 of 6

### **Safety**

The two biggest concerns are accidents caused by pedestrians crossing PCH and Bicyclists accidents with cars in the area. Re-alignment, re-stripping, designated cross-walks, and designated parking would eliminate current safety issues. Channeling pedestrian traffic to one beach access point would facilitate a controlled manner in which the public crosses this stretch of road.



#### *Plan of Action:*

*Coordinate with Ventura County and Caltrans to develop a crosswalk, re-stripping of bike lanes, traffic lanes, and parking. Limit large truck traffic to deliveries.*

### **Security**

There has been an increase in vehicle break-ins as well as loitering after dark in the area. Overall management, improvement, and closely working in partnership with local County Sheriff, and CHP would help alleviate these concerns.

#### **Policing**

Parking Enforcement  
Limited Parking Hours  
Jaywalk Enforcement  
Speed Limit Enforcement

*Plan of Action: Community and County to work with local law enforcement to facilitate communication and enforcement of existing/implemented traffic control, municipal and zoning codes.*

### **Zoning/Trespassing**

Commercial use is a top concern of the homeowners. Overcrowding, increased liability exposure and safety concerns have been fueled by the rapid growth of the surf schools use of Mondo's beach. The beach is zoned for non commercial use and homeowners want to see that zoning maintained to protect over use and abuse of this area. This summer marked the first time we have witnessed illegal vending on the beach. We strongly oppose any commercialization or for profit use of this pristine and special piece of the coast.

*Plan of Action: Strict enforcement and support from the County.*

### **Beautification**

The FHOA has been committed to the enhancement and long-term beautification of Mondo's beach. In conjunction with the county and support of Caltrans, and the Southern Pacific Railroad company, we feel we can enhance the area.

*Plan of Action: Coordinate efforts with CalTrans and SPRR to provide/allow planting, gravel, bark, etc. on the North and South side of PCH. Work with Caltrans to facilitate addition revetment, fencing, and erosion control to support landscape and beautification plans.*

# Landscape Plan

## CONCEPTUAL PLAN

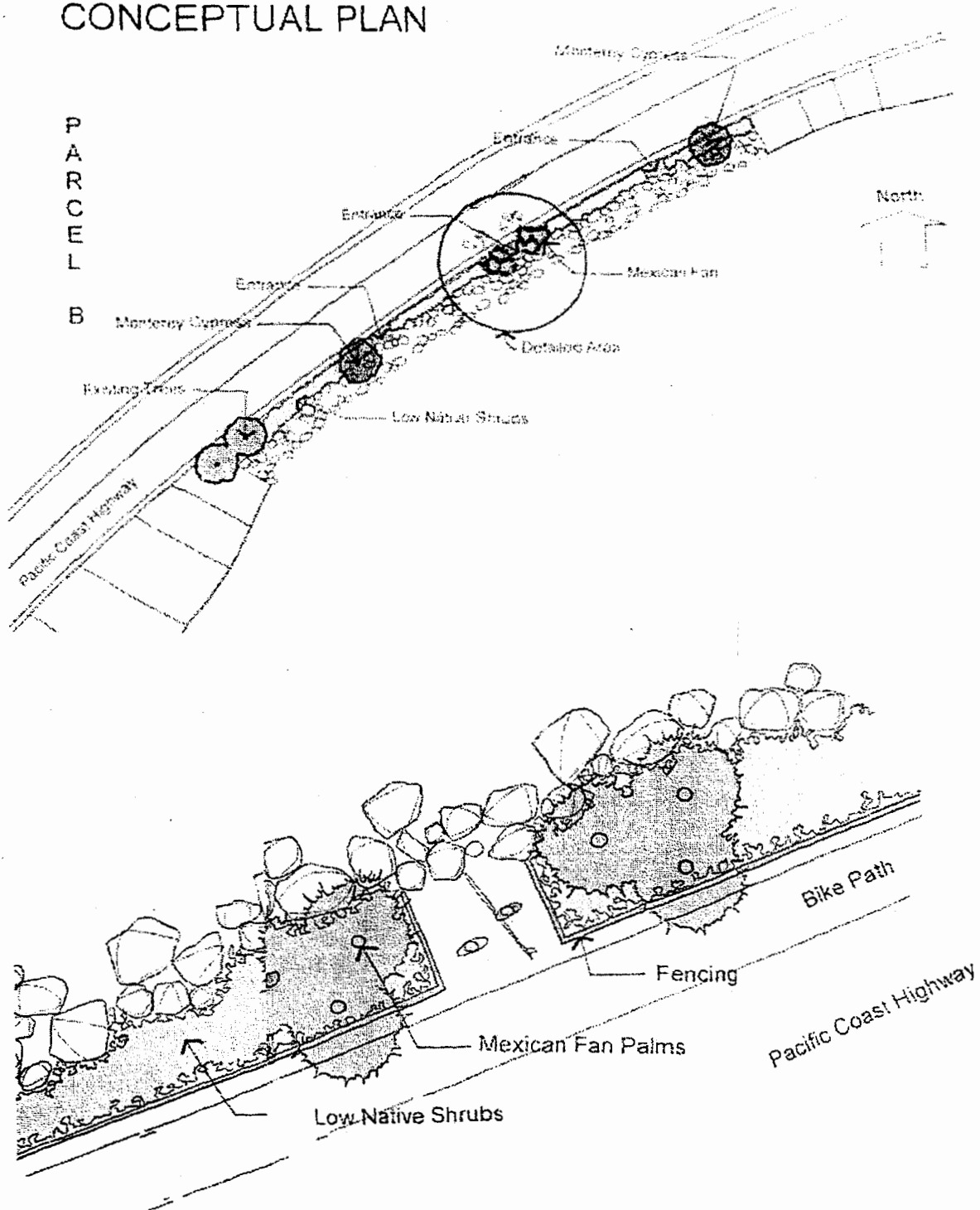
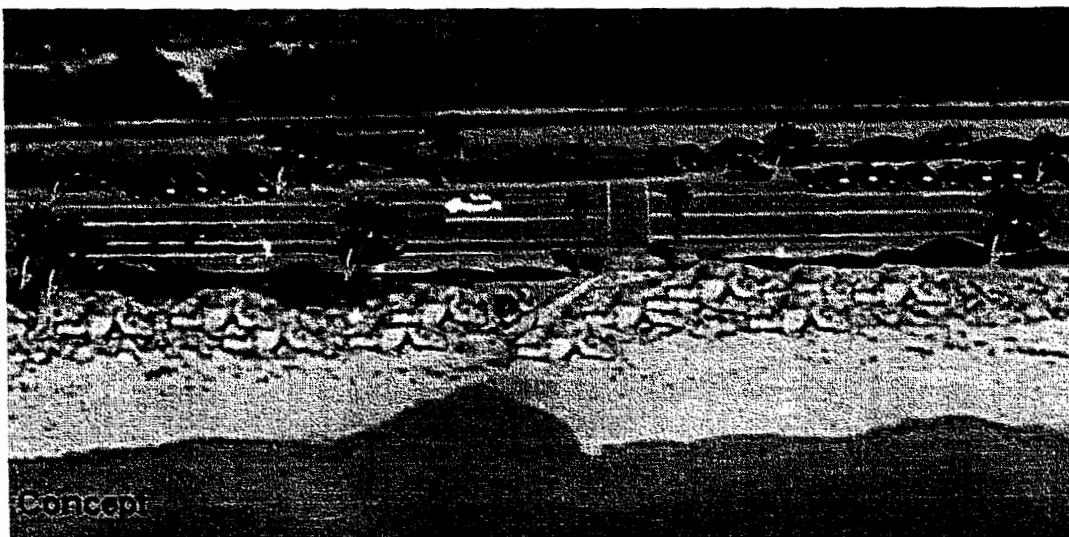
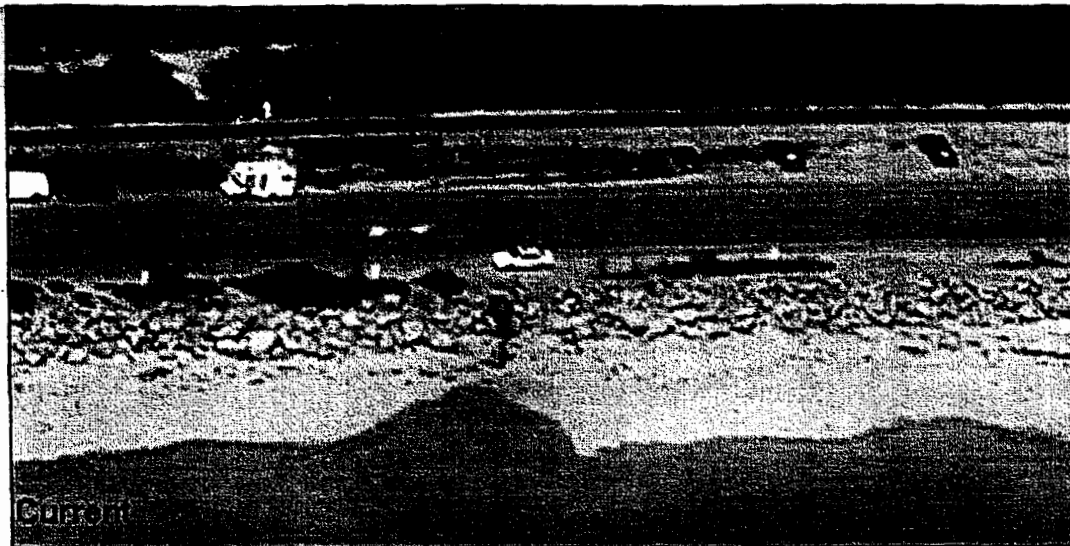


Exhibit 8  
CCC-04-CD-04 (FBHOA)

Page 5 of 6



## Mondo's Beach Conceptual Access Management and Improvement



- Designated parking areas and times
- Cross walk and speed limit signs when pedestrians are present.
- Re-alignment of striping to facilitate parking and larger bike path.
- Beach access ramp
- Additional rock protection for ramp and bluff

Exhibit 8  
CCC-04-CD-04 (FBHOA)

Page 6 of 6

J. ROGER MYERS  
MONTE L. WIDDERS  
KELTON LEE GIBSON  
DENNIS NEIL JONES\*  
ROY SCHNEIDER  
PETER D. LEMMON

WILLIAM D. RAYMOND, JR.  
SCOTT A. HUNTER  
ERIK B. FEINGOLD  
STEVEN P. LEE  
WILLIAM G. SHORT

\*ALSO ADMITTED TO THE NEVADA BAR

MYERS, WIDDERS, GIBSON,  
JONES & SCHNEIDER, L.L.P.

ATTORNEYS AT LAW  
5425 EVERGLADES STREET  
POST OFFICE BOX 7209  
VENTURA, CALIFORNIA 93006

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(805) 644-7390 (FACSIMILE)  
(805) 650-5177 (FACSIMILE)  
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KATHERINE E. STONE, P.C.\*\*  
(805) 644-7621 (FACSIMILE)  
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OF COUNSEL

KAREN A. MEHL  
1110 EAST CLARK AVENUE, #3  
SANTA MARIA, CALIFORNIA 93455  
(805) 934-9624  
(805) 934-1843 (FACSIMILE)

OF COUNSEL

\*\*CERTIFIED SPECIALIST - APPELLATE LAW  
THE STATE BAR OF CALIFORNIA BOARD OF LEGAL  
SPECIALIZATION

March 1, 2004

BY FACSIMILE & U.S. MAIL

Chris Stephens, Planning Director  
County of Ventura  
Resource Management Agency  
Planning Division  
800 South Victoria Avenue, L #1740  
Ventura, California 93009

Re: **Faria Beach Cove Landscaping Project**

Dear Mr. Stephens:

On or about November 12, 2003, Dr. Roger Haring of the Faria Beach Homeowner's Association was informed by Ron Vogelbaum of your staff that a Coastal Development Permit was not required for landscaping adjacent to West Pacific Coast Highway at Faria Beach Cove. Apparently, Coastal Commission staff disagrees with this assessment because on February 26, 2004, Dr. Haring received the enclosed Executive Director Cease and Desist Order. While we do not agree with the factual or legal allegations of the Order, in order to resolve the matter, we would like to formally apply for a Coastal Development Permit for the landscaping. Please send me the appropriate forms and regulations.

Very truly yours,



J. Roger Myers, Chair  
Faria Beach Homeowners Association

JRM:mer

Enclosure(s)

cc: Roger Haring  
Steve Bennett  
Peter Douglas, Executive Director, CCC  
Lisa Haage, Chief of Enforcement, CCC  
Aaron McLendon, Statewide Enforcement Analyst, CCC  
Sandy Goldberg, Staff Counsel, CCC  
Steve Hudson, Southern CA Enforcement Supervisor, CCC

Exhibit 9  
CCC-04-CD-04 (FBHOA)

Page 1 of 1

J. ROGER MYERS  
MONTE L. WIDDERS  
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DENNIS NEIL JONES\*  
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\*ALSO ADMITTED TO THE NEVADA BAR

MYERS, WIDDERS, GIBSON,  
JONES & SCHNEIDER, L.L.P.

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EMAIL: [mwgs@mwgs.com](mailto:mwgs@mwgs.com)  
<http://www.mwgs.com>

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OF COUNSEL

\*\*CERTIFIED SPECIALIST - APPELLATE LAW  
THE STATE BAR OF CALIFORNIA BOARD OF LEGAL  
SPECIALIZATION

March 1, 2004

BY FACSIMILE & U.S. MAIL

Peter M. Douglas, Executive Director  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105


Re: **Public Records Act Request**  
**Cease and Desist Order No. ED-04-CD-01 (Faria Beach)**

Dear Mr. Douglas:

We are in receipt of your Cease and Desist Order No. ED-04-CD-01 dated February 26, 2004 regarding landscaping along the road at Faria Beach cove.

Pursuant to the Public Records Act, we hereby request copies of all documents relied on as a basis for the Order, including but not limited to, "historical photographs," evidence of the location of the mean high tideline, reports of a surfer being cited for trespass, the letter regarding installation of signs, all communication with representatives of the surf schools, surfers, beach users and all evidence of any alleged violations.

Very truly yours,



J. Roger Myers, Chair  
Faria Beach Homeowners Association

JRM:mer

cc: Roger Haring  
Lisa Haage, Chief of Enforcement, CCC  
Aaron McLendon, Statewide Enforcement Analyst, CCC  
Sandy Goldberg, Staff Counsel, CCC  
Steve Hudson, Southern CA Enforcement Supervisor, CCC



**BOARD OF SUPERVISORS  
COUNTY OF VENTURA**

GOVERNMENT CENTER, HALL OF ADMINISTRATION  
800 SOUTH VICTORIA AVENUE, VENTURA, CALIFORNIA 93008

From the Desk of **STEVE BENNETT**  
SUPERVISOR, FIRST DISTRICT  
(805) 654-2703  
FAX: (805) 654-2226  
E-mail: [steve.bennett@mail.co.ventura.ca.us](mailto:steve.bennett@mail.co.ventura.ca.us)

**MEMBERS OF THE BOARD**  
JUDY MIKELS, CHAIR  
STEVE BENNETT  
LINDA PARKS  
KATHY LONG  
JOHN. K. FLYNN

November 7, 2003

Ms. Caroline Tellez  
660 Corte Corrida  
Camarillo, CA 93010

Dear Ms. Tellez,

Thank you for writing to me regarding your concerns with the proposed parking ordinance banning commercial vehicle parking on the Rincon parkway. I agree with you that the public should have access to the beach.

I learned to surf at Mondo's, and still enjoy that beach. I strongly believe Mondo's and nearby beaches should be kept open to the public and people should be able to park their cars and pick-up trucks there. The Ordinance I'm interested in would only apply to commercial vehicles with a gross vehicle weight of over 10,000 lbs (5 tons). By doing this, we make the Rincon Parkway better for many public uses like bike riding, using the beach, etc.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Bennett".

Steve Bennett  
Supervisor, First District

Exhibit 11  
CCC-04-CD-04 (FBHOA)

Page 1 of 1



# **NOTICE**

**THIS IS NOT PUBLIC  
PROPERTY.**

IT IS OWNED BY THE FAMILIES  
OF FARIA BEACH.

WE APPRECIATE  
YOUR CO-OPERATION IN  
OBEYING OUR RESTRICTIONS:

- NO JET SKIS • NO FIRES
- KEEP DOGS ON LEASH

PLEASE TAKE YOUR GARBAGE  
WITH YOU. WE HAVE NO  
REFUSE COLLECTION SERVICE

**FARIA BEACH  
HOMEOWNER'S  
ASSOCIATION**



**NOTICE**

**THIS IS NOT PUBLIC PROPERTY.**  
IT IS OWNED BY THE JAWAHS OF THE PALLA BEACH CLUB.  
**WE APPRECIATE YOUR COOPERATION  
IN OBEYING THE RESTRICTIONS.**

**IT IS A MISDEMEANOR TO OPERATE  
ANY COMMERCIAL BUSINESS,**  
INCLUDING BUT NOT LIMITED TO, SELLING, SCHOOLS, CLASSES,  
RECREATIONAL, OUTDOOR SPORTING EVENTS, INCLUDING  
SUNBATHING, VENTURA COUNTY COASTAL  
ZONING ORDINANCE ON, R. OF V. ART. 2, 4, 5, 7D

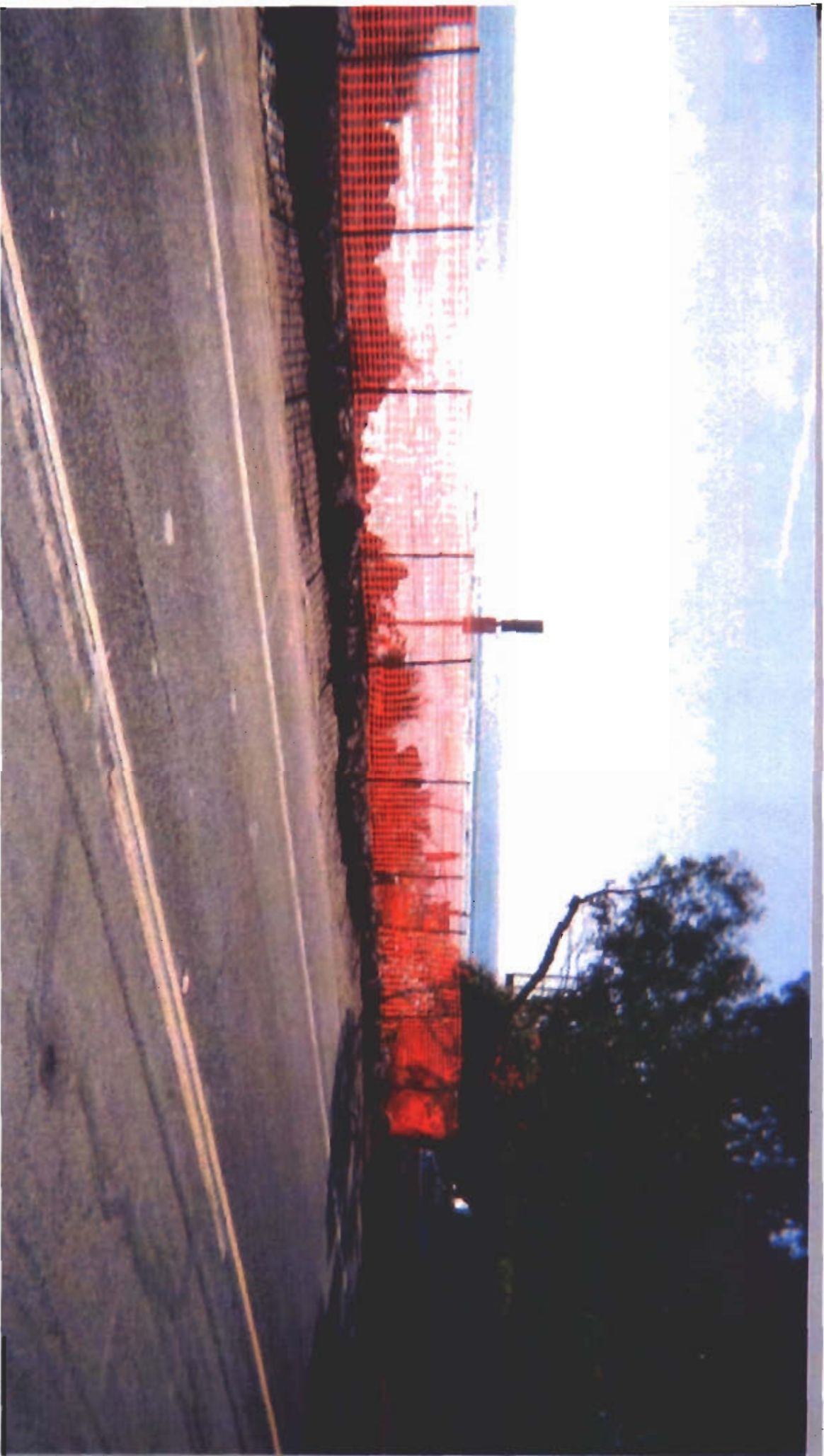
**OPERATION OF ANY SUCH  
COMMERCIAL BUSINESS IS ALSO  
TRESPASSING.**

**NO JET SKIS-NO FIRES**  
**KEEP DOGS ON A LEASH**

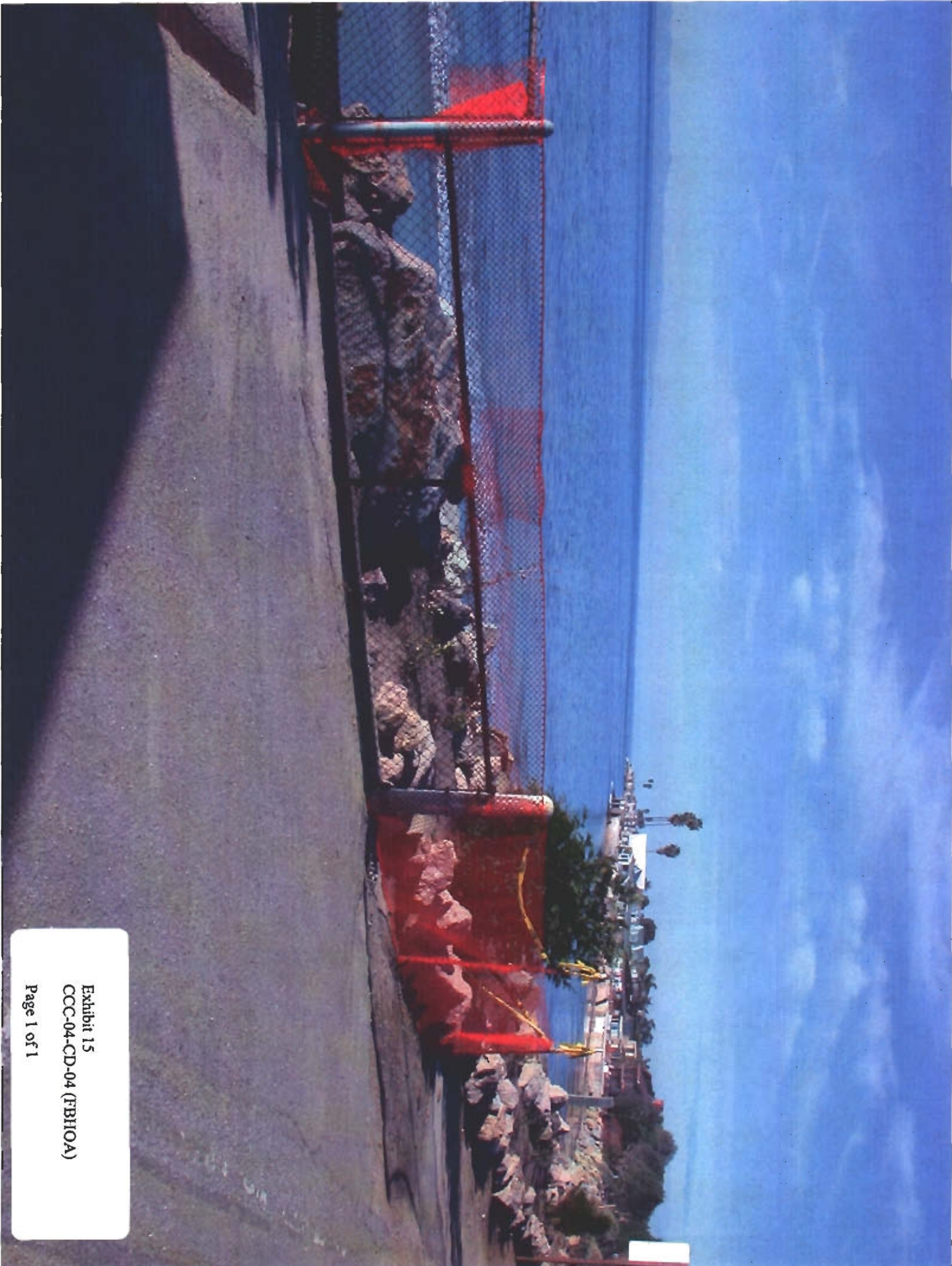
**PLEASE TAKE YOUR GARBAGE  
WITH YOU. WE DO NOT HAVE  
REFUSE COLLECTION SERVICE**

PALLA BEACH HOMEOWNERS ASSOCIATION  
RIGHT TO PASS BY RECREATION AND SUBJECT TO  
CONTROL OF OWNER. CA CIVIL CODE 5008











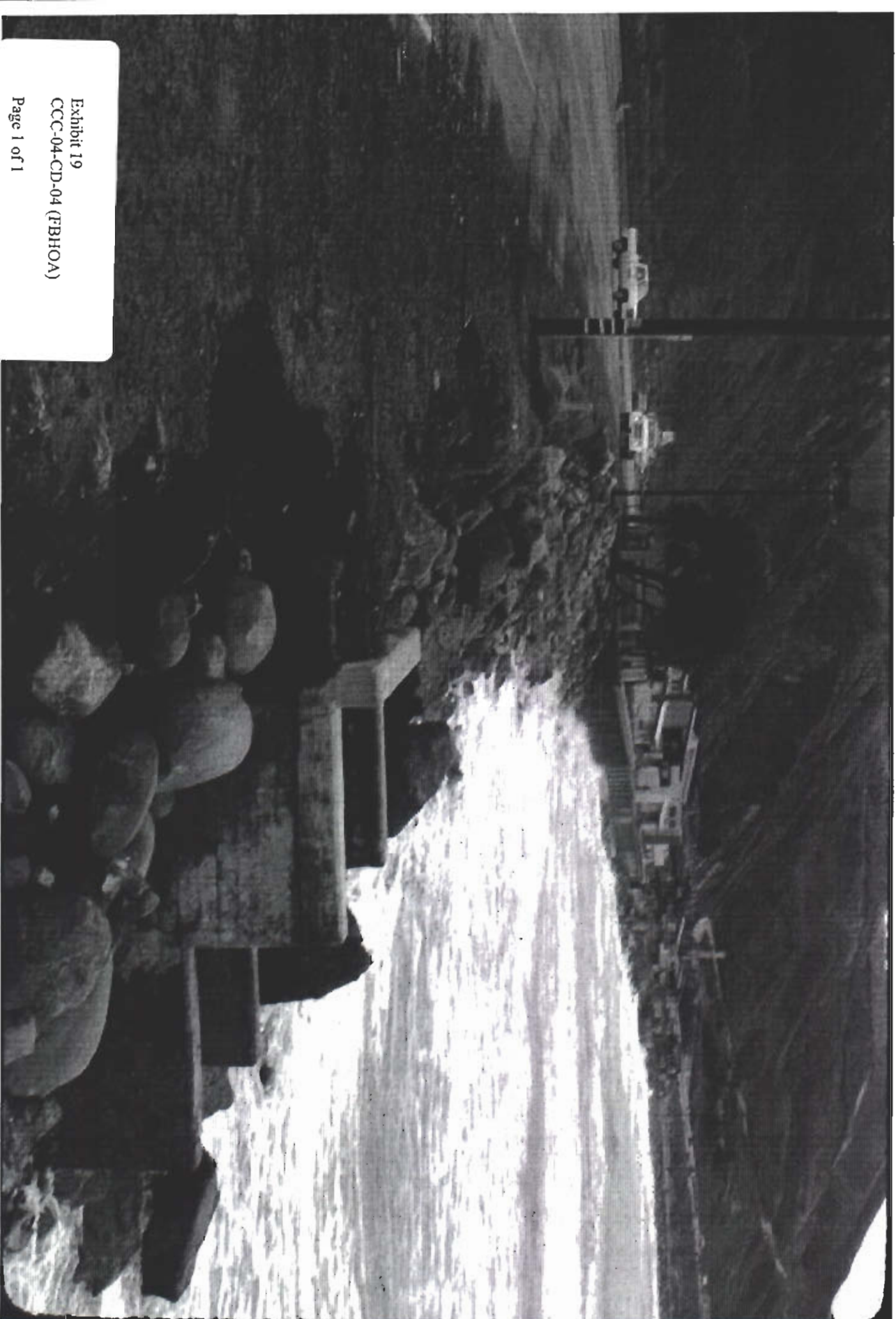






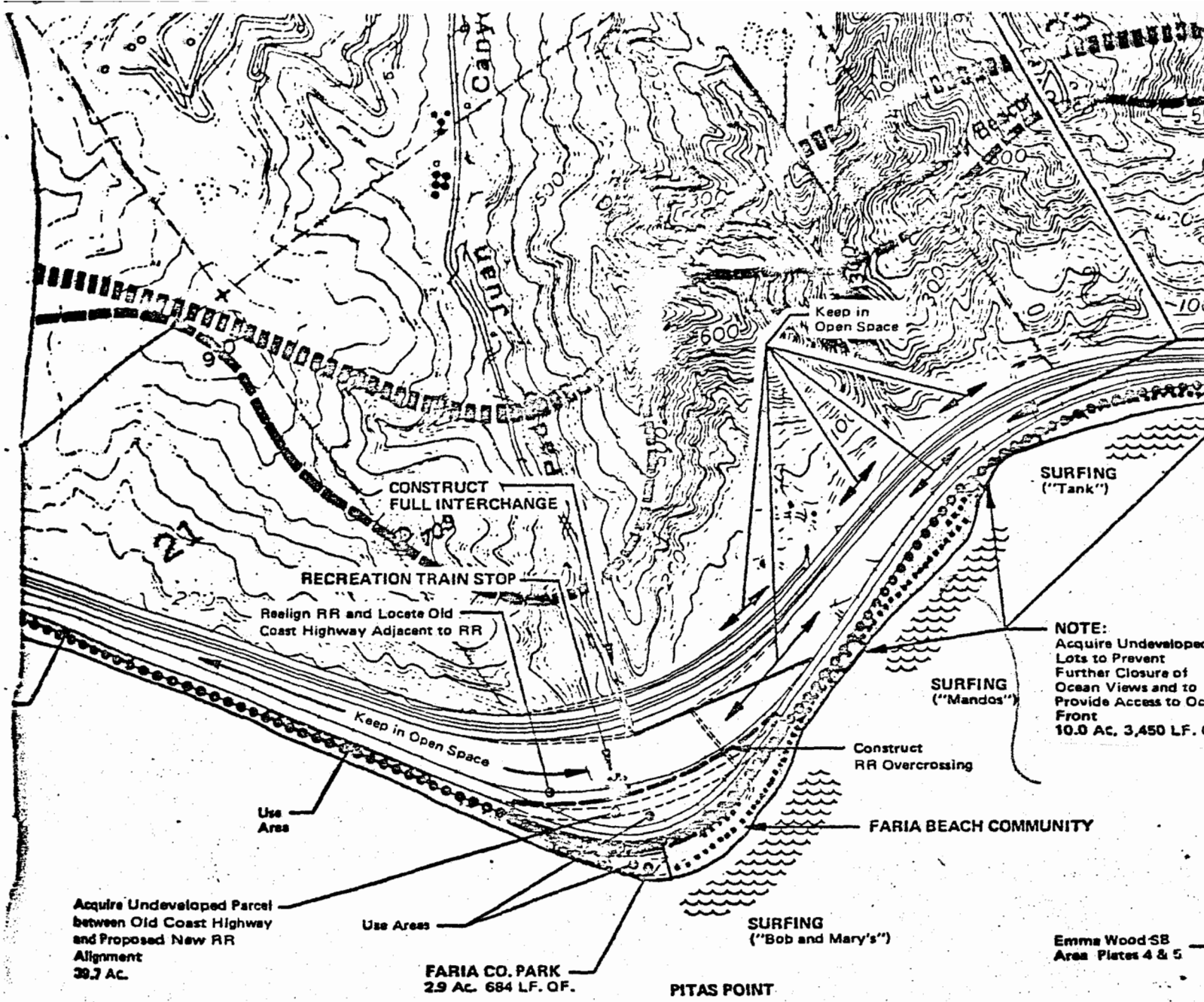












#### FACILITIES

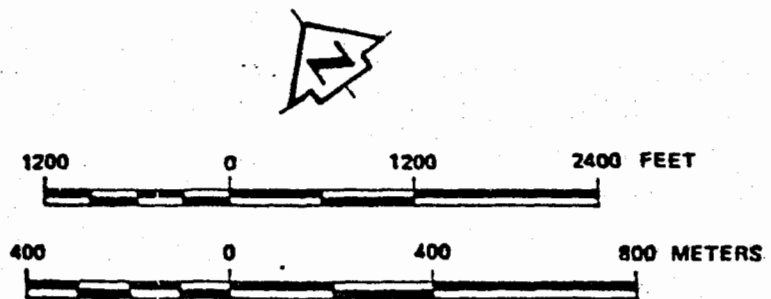
Day Use  
200 Car Parking  
100 Picnic Units  
Overnight Use  
150 Campsites (Total)  
1 Beach Concession

#### EXISTING FACILITIES

Faria Co. Park - 60 Campsites  
Hobson Co. Park - 45 Campsites

Exhibit 21  
CCC-04-CD-04 (FBHOA)

Page 1 of 1



**SUNTY BEACHES STUDY**  
**PITAS POINT AREA**

**PLATI**

J. ROGER MYERS  
MONTE L. WIDDERS  
KELTON LEE GIBSON  
DENNIS NEIL JONES\*  
ROY SCHNEIDER  
PETER D. LEMMON

WILLIAM D. RAYMOND, JR.  
SCOTT A. HUNTER  
ERIK B. FEINGOLD  
STEVEN P. LEE  
WILLIAM G. SHORT

\*ALSO ADMITTED TO THE NEVADA BAR

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OF COUNSEL

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 1 of 58

\*\*CERTIFIED SPECIALIST - APPELLATE LAW  
THE STATE BAR OF CALIFORNIA BOARD OF LEGAL  
SPECIALIZATION

March 15, 2004

BY OVERNIGHT MAIL

Peter M. Douglas, Executive Director  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105

RECEIVED  
MAR 16 2004

CA COASTAL COMMISSION  
LEGAL DIVISION

Re: Cease and Desist Order No. ED-04-CD-01 (Faria Beach)

Dear Mr. Douglas:

This is Faria Beach Homeowners' Association's ("FBHOA") preliminary response to your Cease and Desist Order ("Order") dated February 26, 2004. Enclosed is a booklet of photographs (numbers 1-22) of the Cove (a portion of Parcel B) before and after the landscaping.

Thank you for your prompt response to our Public Records Act request. We note that the documents do not evidence any historical public use of the beach. The unsigned March 21, 2003 annotated photograph of the Civil Code section 1008 signs is incorrect. (See, Exhibit H.) Those signs have been in place in substantially the same format since the Legislature adopted the section to enable beachfront property owners to permit controlled public access while protecting their private property rights. We are hoping to resolve this matter by applying for a Coastal Development Permit from the County of Ventura ("County") which has primary jurisdiction because the landscaping is well above the mean high tideline on private property. As you know, the County informed us that a permit is not needed for the landscape work. Nevertheless, we intend to apply for a permit. (See, Exhibit A, letter to County Planning Director, Chris Stephens dated March 1, 2004.)

**1. FBHOA Has Made a Good Faith Effort to Secure Any Required Permits for the Landscaping.**

Representatives of FBHOA have made numerous inquiries of the County and the Coastal Commission as to whether a permit is needed to landscape the Cove area next to

Pacific Coast Highway and have always been willing to apply for any required permits. We were not informed that the Coastal Commission had decided that a permit is needed until February of this year. In March 2003, a conceptual management plan was presented to the County. (See, Exhibit B.) On May 2, 2003 at 2:00 p.m., Dr. Roger Haring had a telephone conversation with James Johnson of the Ventura Office of the Coastal Commission and informed him of the landscaping plans. Dr. Haring also informed Mr. Johnson of the problem with overuse of the beach by the illegal surf schools. (See, ¶¶ 2A and 4, *infra*.) Mr. Johnson indicated that the County has primary jurisdiction over property above the mean high tideline and that FBHOA should apply to the County for a permit. Dr. Haring told Mr. Johnson that it was the intent of FBHOA to landscape the Cove and to work towards managing public use of the Cove to protect the sensitive environment, including tidepools that exists there.

Dr. Haring and others had numerous meetings with County representatives who informed them that a County permit was *not* necessary. Exhibit C is a letter to Nayna Shah P.E. dated May 23, 2003 informing the County of the current plans.

On October 16, 2003 at 3:30 p.m., Dr. Haring met with Tom Sinclair of the Ventura Office of the Coastal Commission. Mr. Sinclair said to contact the County regarding the necessity of a permit. If no permit was deemed necessary by the County, contact the Coastal Commission about the design of the landscaping.

Dr. Haring informed Mr. Sinclair of the problems caused by the surf schools, which include health and safety issues, such as:

- no legal parking
  - no safe Pacific Coast Highway crossing
  - no safe access over the rocks
  - no restrooms
  - no waste receptacles
  - no life guards
  - poorly supervised young children
- (See, photographs numbers 1-7.)



FBHOA then contacted the County and on October 22, 2003, Dr. Haring faxed Ron Vogelbaum the landscaping plans. Later, while preparation for the landscaping was being installed, the contractor advised putting in some drainage pipes to prevent erosion. (See, photograph number 13.) The area is badly eroded because CalTrans has not maintained the revetments. (See, photograph number 10 [sink hole].) The landscaping is intended to prevent further erosion. Temporary plastic fencing was later installed at the ends of the Cove because people were destroying the plants. (See, photograph numbers 7, 8, 10, 11 & 12.)

On October 9, 2003, a Coastal Commission staffer told FBHOA's contractor to stop work. The contractor agreed. On October 16, 2003, the Coastal Commission staffer told Dr. Haring that he thought a Coastal Development Permit was needed from the County.

On November 11, 2003, Dr. Haring spoke to Ron Vogelbaum of the County who again informed Dr. Haring that a permit from the County was not needed. Dr. Haring spoke with Tom Sinclair by telephone on November 12, 2003 at 8:30 p.m. and informed him of the County's decision that a permit was not needed for the landscaping. Mr. Sinclair said he would try to get a Coastal Commission staff person to "get involved." Dr. Haring again informed him of the public health and safety problems with the surf schools. On November 13, 2003, Dr. Haring faxed Tom Sinclair the plot plan for a phase of the Cove landscaping and informed him that the planting would commence on December 8, 2003. A copy of the fax is Exhibit D.

Apparently, Coastal Commission staff had some confidential communications with County staff in January and February 2004 who according to the Order "declined to take enforcement action." FBHOA was not informed of these communications between Coastal Commission staff and the County.

Photographs of the landscaping show that the landscaping does not block visual or public access to the Cove and is less intrusive than the "natural" vegetation. (See, photographs numbers 9 [natural vegetation], 10-14.)

**2. The County Correctly Determined That a Coastal Development Permit Is Not Needed for the Landscaping.**

**A. There is no right of public access to the Cove.**

The certified Ventura County Coastal Area Plan ("LCP"), as amended, is the governing regulation for the Cove. No where in the LCP is the Cove identified as a public beach or a public accessway from Pacific Coast Highway. (See, pp. 23-24, 30-31, and figs. 3, 4 & 5.) Faria Park, which was donated to the County by the Faria family is the only identified public accessway along Faria Beach. The same is true in the Coastal Commission's Coastal Access Guide; the Cove is not identified as a public accessway.

The LCP recognizes the fact that the Cove has always been protected as private property. Historically, the Faria family permitted friends and family to camp and build beach cabins along Faria Beach. The Cove was permitted to be used as a common area by the owners of the beach cabins and their guests.

In 1983, when the property was subdivided and the lots sold to the owners of the cabins, Faria Park was dedicated to the County and the Cove was granted to the FBHOA and deed restricted for their use only. (A copy of the deed is Exhibit E.) FBHOA, however, recorded a Notice of Consent to Use of Land in 1988 pursuant to Civil Code section 813. (See, Exhibit F.) Signs have been posted pursuant to Civil Code section 1008 since the section was enacted. (A photograph of the original sign is Exhibit G; photograph number 13 is the current sign which has been in place for over a year.) Until the *Nollan* case was decided in 1987 (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825), offers to dedicate lateral access (right to pass and repass only) were routinely exacted when landowners applied to bring their beach cabins up to code which was required by the subdivision map approval. (See, LCP, fig. 5.) The LCP (fig. 15) shows the entire Faria beach, including the Cove, as private property with seaward boundaries far beyond the existing seawalls. The LCP recognizes that "people make their way to the beach primarily through Hobson and Faria County Parks, Emma Wood State Beach, the state managed parking lot and accessway at Rincon Point and the Rincon Parkway," not the Cove. (LCP, p. 3.) No vertical access rights have ever been acquired by the public.

An objective of the LCP is "To provide direction to the State, and local agencies as appropriate, for improving and increasing public recreational opportunities on the North Coast consistent with public health and safety, and the protection of private property rights.") (LCP, p. 30.)

The LCP recognizes that "Trash and sanitation are major problems and illegal camping and parking are frequent." (LCP, p. 30.) This is certainly the case at Faria Beach where the FBHOA pays to clean up the public's trash and people illegally park at the top of the Cove, and on the bikepath and railroad right of way. (See, photographs numbers 1-8 & 22.)

Until the surf schools started conducting their business on the Cove, public use of the Cove was relatively peaceful. Now, for several years, as many as 4 surf schools with dozens of young children in each class have been monopolizing the Cove and the ocean. (See, photographs numbers 1-9, 22.) Unleashed dogs often accompany them. There are no toilets, safe access, medical facilities or lifeguards and parking is illegal. There is no access for emergency response to injuries.

## **B. Grading.**

The LCP does not require a permit for landscaping on private property. With respect to grading, a permit is only required for hillside grading of over 20% slopes with over 50 cubic yards of cut or fill or over ½ acre of brush clearance. The landscaping does not meet this criteria. No grading within the meaning of Public Resources Code section 30106<sup>1</sup> occurred. If a Coastal Development Permit is required for this landscaping, a permit would be required for landscaping of every private front yard along the road side of the coast.

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<sup>1</sup> "Development' means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading...."

**C. Planting.**

The plants are those commonly found along this area of the coast. They were selected to be compatible with native species. Dr. Haring communicated FBHOA's willingness to work with Coastal Commission staff on the types of plants. (See, Exhibit D.) The plants serve to control erosion and invasive, exotic species. The LCP and the Coastal Act do not require a permit for landscaping. The newer plants are less visually obstructive than the "native plants." (See, photographs numbers 7, 9, 11 & 22.)

**D. Rocks.**

All the rocks are entirely on private property, do not impact the shoreline and are needed to control further erosion. The two larger rocks are indistinguishable from rocks placed there by CalTrans to protect Pacific Coastal Highway. The rocks bordering the planting bed are small and similar to those in many private front yards along the coast.

**E. Drainage pipes.**

The drainage pipes were installed on the advice of the contractor to control existing erosion. They do not discharge anything new into the ocean; they redirect existing rainwater drainage more safely.

**F. Temporary fences.**

The temporary plastic fences in two locations were added because people were destroying the plants. (See, photographs numbers 7 & 8 which are photographs of people sitting on the plants and a surfboard deposited on the plants). Where fences have not been installed, plants have been killed. (See, photograph number 11.) The fences will be removed when the plants are established. Less visible temporary fencing (like chicken wire) could be substituted for the orange plastic temporary fences.

**G. Signs.**

The signs are permitted by Civil Code section 1008 and have been in place in substantially the same fashion since the Civil Code section was adopted by the

Legislature for the purpose of providing landowners with the ability to protect their private property rights. (See, photographs numbers 13 and 14 [the signs]; number 15 is a County health warning sign.)

### **3. The Landscaping Does Not Block Access to the Cove.**

As explained in paragraph 2A, there is no right of public access to the Cove and pursuant to Civil Code sections 813 and 1008 the FBHOA has retained the right to control public access to the Cove. The so-called "stairs" at the south end of the Cove are not stairs at all. This is excess concrete which was apparently spilled when the owners enlarged their driveway at 3560 West Pacific Coast Highway. The owners were permitted to extend their driveway onto Parcel B (the Cove). This concrete does not extend to the beach. (See, photograph number 13 showing the spilled concrete and the boulders extending to the beach.) This is obviously not a safe access. The surf schools were utilizing the northerly portion of the Cove in the Summers of 2002 and 2003 prior to installation of the landscaping in December 2003. The people continue to access all over the rocks since the landscaping was installed. (See, photographs numbers 18, 19, 20 & 22.) As shown by photographs taken March 2004, the landscaping does not stop people from using the Cove. (See, photographs numbers 16-22.)

### **4. The Surf Schools Are an Illegal Use of the Cove.**

The entire Cove is zoned R-B (Residential Beach). (LCP, p. 23.) The only compatible use is residential. (LCP, fig. 33 [zoning compatibility matrix].) Commercial use violates the LCP and the County's zoning. Under the LCP, commercial facilities are restricted to the "Coastal Commercial" (C-C) zone. (LCP, p. 7.) In addition, the surf schools regularly illegally park along the Cove and set up business, blocking visual and public access. (See, photograph number 1 [surf school headquarters and van at northerly end of the Cove adjacent to Pacific Coast Highway].) It would be *improper* for the Coastal Commission to issue a Cease and Desist Order to protect the illegal use of the Cove by the surf schools.

**5. FBHOA Would Like to Work With the Coastal Commission and the County to Manage Public Use of the Cove to Protect Sensitive Coastal Resources and Insure the Public Health and Safety of Cove Users.**

Over use of the Cove and commercial use of the Cove, with its attendant trash, water pollution, destruction of tidepools, nuisance activities, traffic hazards and public health safety problems have increasingly jeopardized this sensitive environment. FBHOA pays \$150 a month to have the Cove cleaned up. FBHOA would welcome managed public use of the Cove and would be happy to work with the Coastal Commission and the County to resolve these public health and safety issues.

I personally would be willing to recommend to the FBHOA that permanent controlled public access to the Cove be granted if the issues of environmental protection, public health and safety and private property rights can be satisfactorily resolved. If there is to be a hearing before the Coastal Commission on this matter in April, we would prefer the Thursday, April 15, 2003 date so Dr. Haring can be present.

Please do not hesitate to contact me if I can provide you with any further information. I sincerely hope this matter can be speedily and amicably resolved.

Very truly yours,



J. Roger Myers, Chair  
Faria Beach Homeowners' Association

JRM:mer  
Enclosure(s)

cc: Roger Haring  
Lisa Haage, Chief of Enforcement, CCC  
Aaron McLendon, Statewide Enforcement Analyst, CCC  
Sandy Goldberg, Staff Counsel, CCC  
Steve Hudson, Southern CA Enforcement Supervisor, CCC  
Steve Bennett, Supervisor, County of Ventura  
Chris Stephens, Planning Director, County of Ventura

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 9 of 58

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**EXHIBIT A**

J. ROGER MYERS  
MONTE L. WIDDERS  
KELTON LEE GIBSON  
DENNIS NEIL JONES\*  
ROY SCHNEIDER  
PETER D. LEMMON

WILLIAM D. RAYMOND, JR.  
SCOTT A. HUNTER  
ERIK B. FEINGOLD  
STEVEN P. LEE  
WILLIAM G. SHORT

\*ALSO ADMITTED TO THE NEVADA BAR

MYERS, WIDDERS, GIBSON,  
JONES & SCHNEIDER, L.L.P.

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(805) 650-5177 (FACSIMILE)  
EMAIL: [mwgs@mwgs.com](mailto:mwgs@mwgs.com)  
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OF COUNSEL

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OF COUNSEL

\*\*CERTIFIED SPECIALIST - APPELLATE LAW  
THE STATE BAR OF CALIFORNIA BOARD OF LEGAL  
SPECIALIZATION

March 1, 2004

BY FACSIMILE & U.S. MAIL

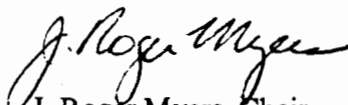
Chris Stephens, Planning Director  
County of Ventura  
Resource Management Agency  
Planning Division  
800 South Victoria Avenue, L #1740  
Ventura, California 93009

Re: **Faria Beach Cove Landscaping Project**

Dear Mr. Stephens:

On or about November 12, 2003, Dr. Roger Haring of the Faria Beach Homeowner's Association was informed by Ron Vogelbaum of your staff that a Coastal Development Permit was not required for landscaping adjacent to West Pacific Coast Highway at Faria Beach Cove. Apparently, Coastal Commission staff disagrees with this assessment because on February 26, 2004, Dr. Haring received the enclosed Executive Director Cease and Desist Order. While we do not agree with the factual or legal allegations of the Order, in order to resolve the matter, we would like to formally apply for a Coastal Development Permit for the landscaping. Please send me the appropriate forms and regulations.

Very truly yours,



J. Roger Myers, Chair  
Faria Beach Homeowners Association

JRM:mer

Enclosure(s)

cc: Roger Haring  
Steve Bennett  
Peter Douglas, Executive Director, CCC  
Lisa Haage, Chief of Enforcement, CCC  
Aaron McLendon, Statewide Enforcement Analyst, CCC  
Sandy Goldberg, Staff Counsel, CCC  
Steve Hudson, Southern CA Enforcement Supervisor, CCC

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 10 of 58



Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 11 of 58

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**EXHIBIT B**

**Faria Beach Homeowners Association**  
Rough Draft Mondo's Beach Management and Beautification 03/2003

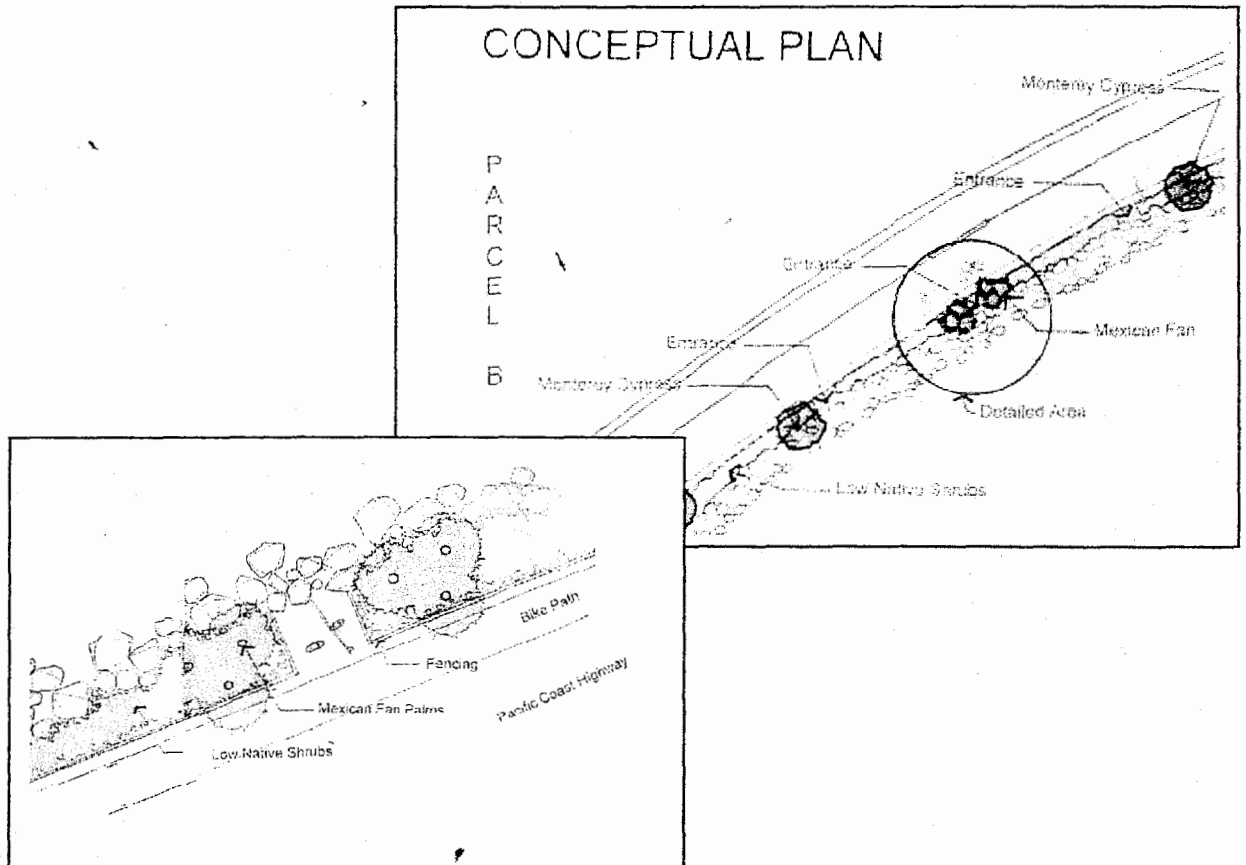


Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 12 of 58

## **Background**

Faria Beach Homeowners Association (FHOA) desires to work in partnership with the County of Ventura to balance the public, private and environmental interests as they relate to the Faria Beach Homeowners property identified as Parcel B / Mondo's Beach.

In the last two years, we have seen exponential growth in both public and commercial access to the Mondo's beach area of the Faria Beach Colony. Safety, security, environmental and quality of life concerns by the residence and owners of the property are prompting immediate planning and action. Over the last several years, the homeowners have budgeted and undertaken landscaping improvements to the area, but feel the task is larger than that. We wish to implement a plan that encompasses the necessary public and private agencies to the betterment of this special coastal area.

A comprehensive plan sponsored by the County of Ventura and FHOA would help facilitate cooperation and funding across the various County departments, South Pacific Railroad, Caltrans and any potential conservancy funding sources.

## **History of Community**

- Founded Early 1900 Manual Faria
- Farming Families• 1920's Summer Camp
- 1930's Leased Summer Cabins
- 1980's Homeowners Association Created
- 1980's Donated Ventura County Park (Faria Park)



Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 13 of 58

## List of Concerns and Plan of Action Outline

### **Access**

Access to the beach is very dangerous at present. There are no ramps or stairs present. The homeowners feel a safe and strategically placed ramp or stair would alleviate a major concern. It would also channel the public through one central access point where the crosswalk, trash, and restroom facilities could be located.

#### **Access Safety and Liability**

Access Safety is the number one issue facing the homeowners. We strongly feel that another summer of women and children clambering down rock revetment is an unacceptable liability exposure to the homeowners.

*Plan of Action: The Homeowners are open to discuss dedicated access to Mondo's beach as long as it is part of an overall structured management plan encompassing the concerns of the owners. Short-term, we need the County's support for policing existing commercial schools and addressing safety concerns. Long-term, we feel the best and most expeditious approach would be for the County to take a lead position in coordinating support and potential funding sources for dedicated access through the Coastal Conservancy, Coastal Commission, or any other public or private agency.*

### **Environmental Management**

Overuse is an issue and needs to be address through a solid management plan supported by limiting the parking times and zones in the immediate area as well as opening up additional parking times and zones along the coast that are currently restricting access.

#### **Trash Collection**

Permanent Trash cans would allow the public to dispose of waste. The concern is that this needs to be done in such a way as to avoid vandalism, and unsightliness. As part of a central point of beach access, and overall management plan this would be accomplished without having a negative impact.

#### **Overcrowding**

With a balanced plan for available parking at Mondo's and surrounding coastal areas, we can avoid the negative impact of over use on this delicate tidal zone.



Summer Day At Mondo's

*Plan of Action: Work with County on development of designated parking areas and time zones. Enforce existing non commercial zoning. Review funding for ongoing maintenance and disposal of trash and human waste.*

### **Safety**

The two biggest concerns are accidents caused by pedestrians crossing PCH and Bicyclists accidents with cars in the area. Re-alignment, re-stripping, designated cross-walks, and designated parking would eliminate current safety issues. Channeling pedestrian traffic to one beach access point would facilitate a controlled manner in which the public crosses this stretch of road.



#### *Plan of Action:*

*Coordinate with Ventura County and Caltrans to develop a crosswalk, re-stripping of bike lanes, traffic lanes, and parking. Limit large truck traffic to deliveries.*

### **Security**

There has been an increase in vehicle break-ins as well as loitering after dark in the area. Overall management, improvement, and closely working in partnership with local County Sheriff, and CHP would help alleviate these concerns.

#### **Policing**

Parking Enforcement  
Limited Parking Hours  
Jaywalk Enforcement  
Speed Limit Enforcement

*Plan of Action: Community and County to work with local law enforcement to facilitate communication and enforcement of existing/implemented traffic control, municipal and zoning codes.*

### **Zoning/Trespassing**

Commercial use is a top concern of the homeowners. Overcrowding, increased liability exposure and safety concerns have been fueled by the rapid growth of the surf schools use of Mondo's beach. The beach is zoned for non commercial use and homeowners want to see that zoning maintained to protect over use and abuse of this area. This summer marked the first time we have witnessed illegal vending on the beach. We strongly oppose any commercialization or for profit use of this pristine and special piece of the coast.

*Plan of Action: Strict enforcement and support from the County.*

### **Beautification**

The FHOA has been committed to the enhancement and long-term beautification of Mondo's beach. In conjunction with the county and support of Caltrans, and the Southern Pacific Railroad company, we feel we can enhance the area.

*Plan of Action: Coordinate efforts with CalTrans and SPRR to provide/allow planting, gravel, bark, etc. on the North and South side of PCH. Work with Caltrans to facilitate addition revetment, fencing, and erosion control to support landscape and beautification plans.*

# Landscape Plan

## CONCEPTUAL PLAN

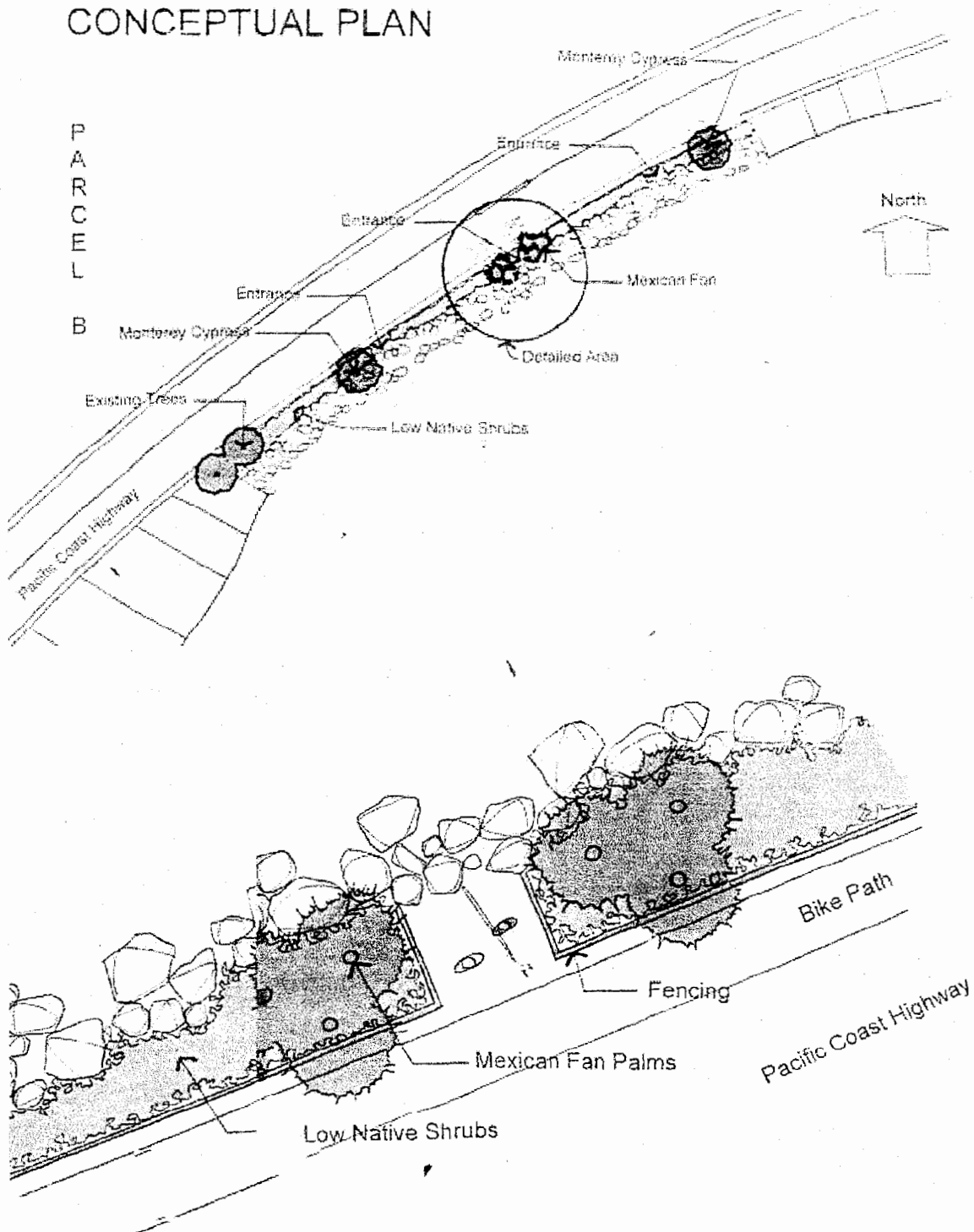
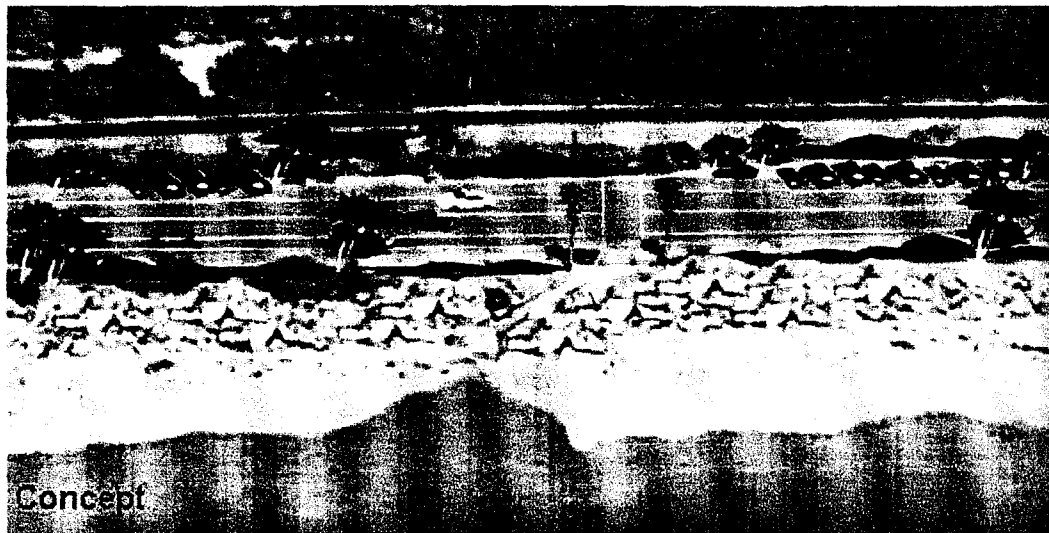


Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 16 of 58

## Mondo's Beach Conceptual Access Management and Improvement



Designated parking areas and times

Cross walk and speed limit signs when pedestrians are present.

Re-alignment of striping to facilitate parking and larger bike path.

Beach access ramp

Additional rock protection for ramp and bluff.

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 17 of 58

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 18 of 58

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**EXHIBIT C**



# **FARIA BEACH HOMEOWNERS ASSOCIATION**

**P.O. BOX 1584  
VENTURA, CA 93002**

May 23, 2003

Nayna Shah P.E.  
950 County Square Drive  
Suite 112  
Ventura, California  
93003-5442

Dear Ms. Shah,

Since our meeting last month regarding the beautification of the Cove at Faria Beach, the Faria Beach Homeowners Board of Directors has decided to proceed with a scaled down project from the one that I presented. Our current plan is to landscape the Cove with ground cover, small shrubs appropriate to the location and perhaps a few trees on our property, adjacent to the Caltrans easement, but not encroaching on the road.

We will water and maintain the plants at our expense and we will not be requesting an encroachment permit or a maintenance agreement with you at this time.

I want to thank you and the other members of your office for meeting with me and giving me your guidance on this project. If you wish to contact me, you may do so at 661-296-7201.

Sincerely,

Dr. Roger Haring, Vice-Chairman  
Faria Beach Homeowners Association  
Board of Directors

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 19 of 58

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 20 of 58

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**EXHIBIT D**

FAX - 7 PAGES TOTAL

ROGER D. HARING, M.D.

A PROFESSIONAL CORPORATION  
 OTOLARYNGOLOGY AND HEAD & NECK SURGERY  
 24515 KANSAS STREET  
 POST OFFICE BOX 220658  
 NEWHALL, CALIFORNIA 91322-0658

Exhibit 22  
 CCC-04-CD-04 (FBHOA)

Page 21 of 58

TELEPHONE: (661) 259-8250

11/13/03 11<sup>00</sup> AM

TO: TOM SINCLAIR / COASTAL COMMISSION  
 FROM: ROGER D. HARING MD  
 RE: FARIA BEACH COVE PROJECT / ETC.

COMMENTS: I AM FAXING TO YOU FOR YOUR REVIEW:

- A) PLOT PLAN FOR THIS PHASE OF THE COVE PROJECT (4 PAGES)
- B) LETTER TO THE VENTURA STAR REGARDING THE FARIA BEACH HOMEOWNERS POSITION ON TRUCKS ON PCH / SURF SCHOOLS AT THE COVE & PUBLIC ACCESS TO THE BEACH AT THE COVE (1 PAGE)
- C) A FLYER FOR "SINUS RINSE" A PRODUCT MANY OF MY PATIENTS FIND HELPFUL. I CALLED RITE AID PHARMACY ON MAIN STREET IN DOWNTOWN VENTURA (NEXT TO VONS) AND ORDERED ONE. IT WILL BE AVAILABLE FRIDAY 11/14/03 AFTERNOON. COSTS \$12.00 (CHEAP) AND IS A "GOOD THING" TO HAVE IN YOUR MEDICINE CABINET.

I PLAN TO START PLANTING 12/8/03 AND HAVE LOCATED A NURSERY IN MOORPARK (MATILITA NURSERY) WHICH SPECIALIZES IN CALIF. NATIVE PLANTS — BUT I HAVEN'T <sup>DECIDED</sup> WHAT TO PLANT YET & AM WILLING TO WORK WITH YOUR OFFICE ON THIS. R.D.H.

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 22 of 58

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**EXHIBIT E**

AUG-10-2000 12:03

FIRST AMERICAN

RECORDING REQUESTED BY

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 23 of 58

AND WHEN RECORDED MAIL TO

Name **PARIA BEACH HOMEOWNER'S ASSN.**  
 Street Address **P. O. Box 1584**  
**Ventura, CA 93002**  
 City & State

MAIL TAX STATEMENTS TO

Name **PARIA BEACH HOMEOWNERS ASSN.**  
 Street Address **P. O. Box 1584**  
**Ventura, CA 93002**  
 City & State

77491 EXEMPTED

PAID BY LE

FEE  
\$3

RECORDED IN OFFICIAL RECORDS  
 OF VENTURA COUNTY, CALIFORNIA  
 20 MIN. 4 P.M. JUL 19 1983  
 RICHARD D. DEAN, COUNTY RECORDER

SURVEY  
 MON. FUND  
 FEE \$10.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CAT. NO. NND0822  
TO 1922 CA 17-821

## Individual Grant Deed

THIS FORM FURNISHED BY TIGOR TITLE INSURANCE

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ NONE

- ( ) computed on full value of property conveyed, or  
 ( ) computed on full value less value of liens and encumbrances remaining at time of sale.  
 ( ) Unincorporated area: ( ) City of \_\_\_\_\_, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

ROBERT L. MOBLEY, ELIZABETH M. BLANCHARD and FRANK E. ORR, Trustees of  
 the Faria Beach Trust under Declaration of Trust dated May 27, 1981,

hereby GRANT(S) to **PARIA BEACH HOMEOWNER'S ASSOCIATION**, a California nonprofit  
 corporation,

the following described real property in the  
 County of **Ventura**

, State of California:

Parcels A and B as shown on the map of Faria Beach Colony Tract filed  
 in Book 36, page 27 of Records of Survey in the office of the County  
 Recorder of said County, and also those particular portions of said  
 land designated and delineated as "Private Access" parcels on the map  
 of said tract lying between lots 4 and 4A, lots 14 and 15, lots 17 and  
 17A, lots 33 and 34, lots 49A and 50, and lots 51C and 52 of said tract.

This conveyance is made upon the condition that all of said property  
 shall be used by the Grantee for the benefit of the owners of all of  
 the lots in said tract except the owners of lots 34, 56, 69, 69A and 70B.

This conveyance is made without consideration, for which reason no  
 documentary transfer tax is payable. This conveyance is a gift and  
 is exempt pursuant to Ordinance 2585.

Assessor's Parcel Nos. 060-0-380-235, 060-0-380-245, 060-0-390-045,  
 060-0-390-145, 060-0-390-335, 060-0-390-335, 060-0-390-525, 060-0-400-176, 060-0-400-235  
**PARIA BEACH TRUST**

Dated: July 6, 1983By: Robert L. Mobley  
Robert L. Mobley, Trustee

STATE OF CALIFORNIA  
 COUNTY OF VENTURA

On July 6, 1983 before  
 me, the undersigned, a Notary Public in and for said State,  
 personally appeared **ROBERT L. MOBLEY,**  
**ELIZABETH M. BLANCHARD and FRANK E. ORR**

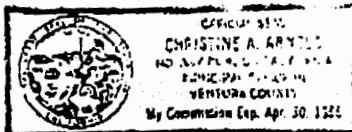
By: Elizabeth M. Blanchard  
Elizabeth M. Blanchard, Trustee

personally known to me or proved to me on the basis of sat-  
 isfactory evidence to be the person(s) whose name(s) are  
 subscribed to the within instrument and acknowledged  
 that they executed the same.  
 WITNESS my hand and official seal.

By: Frank E. Orr  
Frank E. Orr, Trustee

Signature

Christine A. Arnold



(This area for official notarial seal)

Title Order No.

Escrow or Loan No.

JUL 19 1983

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 24 of 58

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**EXHIBIT F**

88-124268 Rec Fee 13.00  
: Check 13.00

Recorded :  
Official Records :  
County of :  
Ventura :  
Richard D. Dean :  
Recorder :  
8:47am 25-Aug-88 :

DJ 5

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

RONALD L. COLTON  
BENTON, ORR, DUVAL & BUCKINGHAM  
19 NORTH CALIFORNIA STREET  
VENTURA, CALIFORNIA 93001

**NOTICE OF CONSENT TO USE OF LAND**

NOTICE IS HEREBY GIVEN, pursuant to section 813 of the California Civil Code, as follows:

A. MARIA BEACH HOME OWNERS ASSOCIATION is the holder of record title to that property which is more particularly described in Exhibit A attached hereto and made a part hereof by this reference (hereinafter the "Land").

B. The right of the public or any person to make any use whatsoever of the above-described Land or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or declaration) is by permission, and subject to control, of owner: section 813, Civil Code.

C. This notice is given in accordance with Civil Code section 813, to establish conclusive evidence that subsequent use of the Land during the time this notice is in effect by the public or any user for any purpose (other than any use expressly allowed

by a written or recorded map, agreement, deed or dedication) is permissive and without consent in any judicial proceedings involving the issue as to whether all or any portion of such Land has been dedicated to public use or whether any user has a prescriptive right in such Land or any portion thereof.

D. Such consent to the use for the purpose described is subject to the right of the undersigned, pursuant to Civil Code section 813, to revoke such consent by recording a notice of revocation in the Office of the Recorder of Ventura County, State of California.

E. Pursuant to California Civil Code sections 813 and 1009(g), such permission may be conditioned upon reasonable restrictions on the time, place and manner of such public use, and no use in violation of such restrictions shall be considered public use for purposes of finding of implied dedication. Without limiting their rights to place reasonable restrictions on other uses, the undersigned do not give their permission to any of the following uses:

1. Campfires or any other open burning of any material whatsoever;
2. Overnight camping;
3. Any unleashed pet;
4. Any littering whatsoever;
5. Fireworks of any type;
6. Jet skis;
7. Loud music or other noise;



8. Any activity made illegal by applicable federal, state, or local regulation or law.

Dated: July 30<sup>th</sup>, 1988

PARIA BEACH HOME OWNERS ASSOCIATION

*Richard Piddock*  
RICHARD PIDDOCK - Director

*Lee M. Griswold*  
LEE M. GRISWOLD - Director

*Kathy Wiskimski*  
KATHY WISKIMSKI - Director

*Gilbert Richardson*  
GILBERT RICHARDSON - Director

*Paul Leavens*  
PAUL LEAVENS - Director

*Tracy Susman*  
TRACY SUSMAN - Director

*Ken Piddock*  
KEN PIDDOCK - Director

*Tracy Susman*  
TRACY SUSMAN, Subscribing Witness

4589

EXHIBIT "A"

Real property in the County of Ventura, State of California, described as follows:

Parcel B described in a Record of Survey Map recorded in Book 36, Pages 27-33 in the Records of Surveys of Ventura County, California filed for record on September 29, 1967.

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 28 of 58

STATE OF CALIFORNIA  
COUNTY OF VENTURA

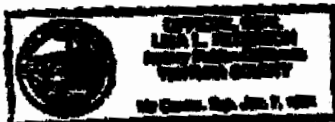
) ss.

On August 3, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared TRACY SUSMAN, personally known to me to be the person whose name is subscribed to the within instrument, as being the subscribing witness thereto, said subscribing witness being by me duly sworn, deposes and says:

That this witness resides in Ventura, California, and that said witness was present and saw RICHARD FIDDOCK, LEE CRISWOLD, KATHY NISHIMORI, GILBERT RICHARDSON, PAUL LEAVENS, and KENT FIDDOCK, such persons being personally known to said witness to be the same persons described in and whose names are subscribed to the within and annexed instrument as Directors of FARIA BEACH HOME OWNERS ASSOCIATION, and, further, each known to the witness to be a director of FARIA BEACH HOME OWNERS ASSOCIATION, execute and deliver the same and that affiant subscribed her name to the within instrument as a witness.

WITNESS MY HAND AND OFFICIAL SEAL.

*Lucia L. Peterson*



STATE OF CALIFORNIA  
COUNTY OF VENTURA

) ss.

On August 3, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared TRACY SUSMAN, personally known to me to be the person who executed the within instrument as a Director of FARIA BEACH HOME OWNERS ASSOCIATION, and, further, personally known to me to be a Director of FARIA BEACH HOME OWNERS ASSOCIATION, and whose name is subscribed to the within instrument, and acknowledged that she executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

*Lucia L. Peterson*

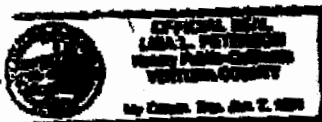


Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 30 of 58

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**EXHIBIT G**

# **NOTICE**

**THIS IS NOT PUBLIC  
PROPERTY.**

**IT IS OWNED BY THE FAMILIES  
OF FARIA BEACH.**

**WE APPRECIATE  
YOUR CO-OPERATION IN  
OBEYING OUR RESTRICTIONS:**

- **NO JET SKIS • NO FIRES**
- **KEEP DOGS ON LEASH**

**PLEASE TAKE YOUR GARBAGE  
WITH YOU. WE HAVE NO  
REFUSE COLLECTION SERVICE.**

**FARIA BEACH  
HOMEOWNERS  
ASSOCIATION**

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 32 of 58

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**EXHIBIT H**

3/21/05

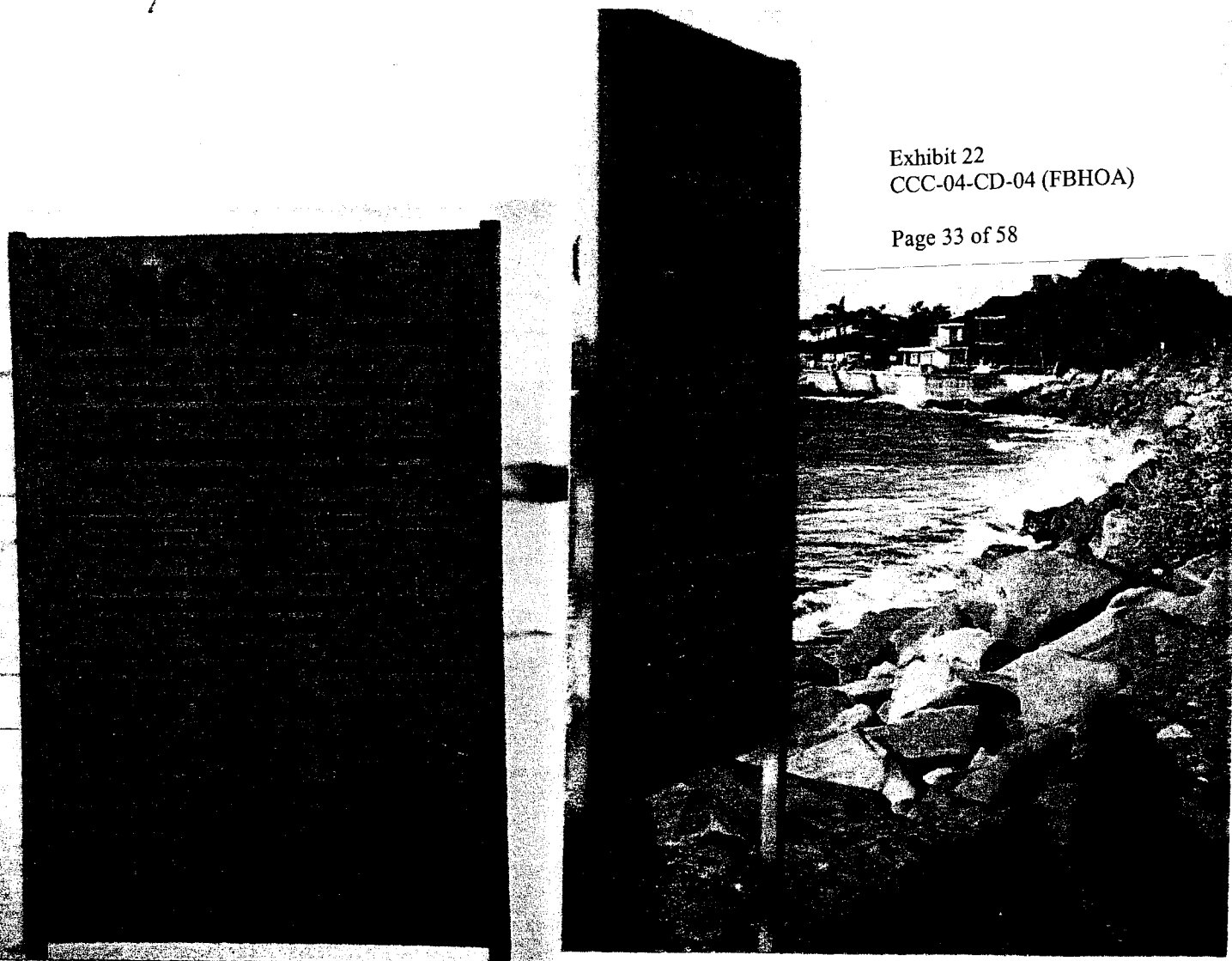
FAR A BEACH/MONDOS AREA

THESE ARE PHOTOS OF A SIGN RECENTLY  
ERECTED ON THE ROADSIDE OF FARIA/MONDOS BEACH.  
EVIDENTLY THE HOMEOWNERS THERE BELIEVE THAT  
THEY HAVE THE RIGHT TO RESTRICT ACCESS TO THIS  
BEACH.

AS IS EVIDENCED IN THESE PHOTOS THE OCEAN  
VIRTUALLY SPLASHES UPON THE ROAD (THE PUBLIC ROAD)

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 33 of 58



AT HIGH TIDE.

THIS BEACH IS A SAFE BEACH FOR CHILDREN AND  
FAMILIES. IT IS FREQUENTED BY A STEADY AND WHOLESOME  
GROUP OF BEACH-GOERS. THE ACCESS IS CONVENIENT AND SAFE  
FOR ALL.

THE THREATENING TONE OF THE SIGN POSTED SEEMS  
INCONGRUENT WITH THE NATURE OF PUBLIC ACCESS. WE  
HOPED THAT THE COASTAL COMMISSION COULD REVIEW THIS  
SITUATION AND EFFORT TO PRESERVE THE PUBLIC'S USE OF  
THIS BEACH. REMOVING THE SIGN IF POSSIBLE. THANK YOU.

## FAR A BEACH / MONDO'S AREA

NO TRESPASSING  
SIGN POSTED  
HERE

This photo illustrates  
the proximity of  
the county road  
to the Rip/Rap.  
It is in this area  
that most people  
access the beach.  
There is less than  
10' of ground  
between asphalt  
and rock.



It would seem  
that all this  
area would fall  
under the  
jurisdiction of  
those that maintain  
the county road  
and its easements  
and then the  
Coastal Zone that  
operates within  
the bounds of  
the mean high  
tide. Suggesting  
that there simply  
could not be a  
privately owned  
strip of land  
between road and  
sea.

NO TRESPASSING  
SIGN POSTED  
HERE.



RECEIVED  
MAR 16 2004

CA COASTAL COMMISSION  
LEGAL DIVISION

# **PHOTOGRAPHS OF THE COVE AT FARIA BEACH**

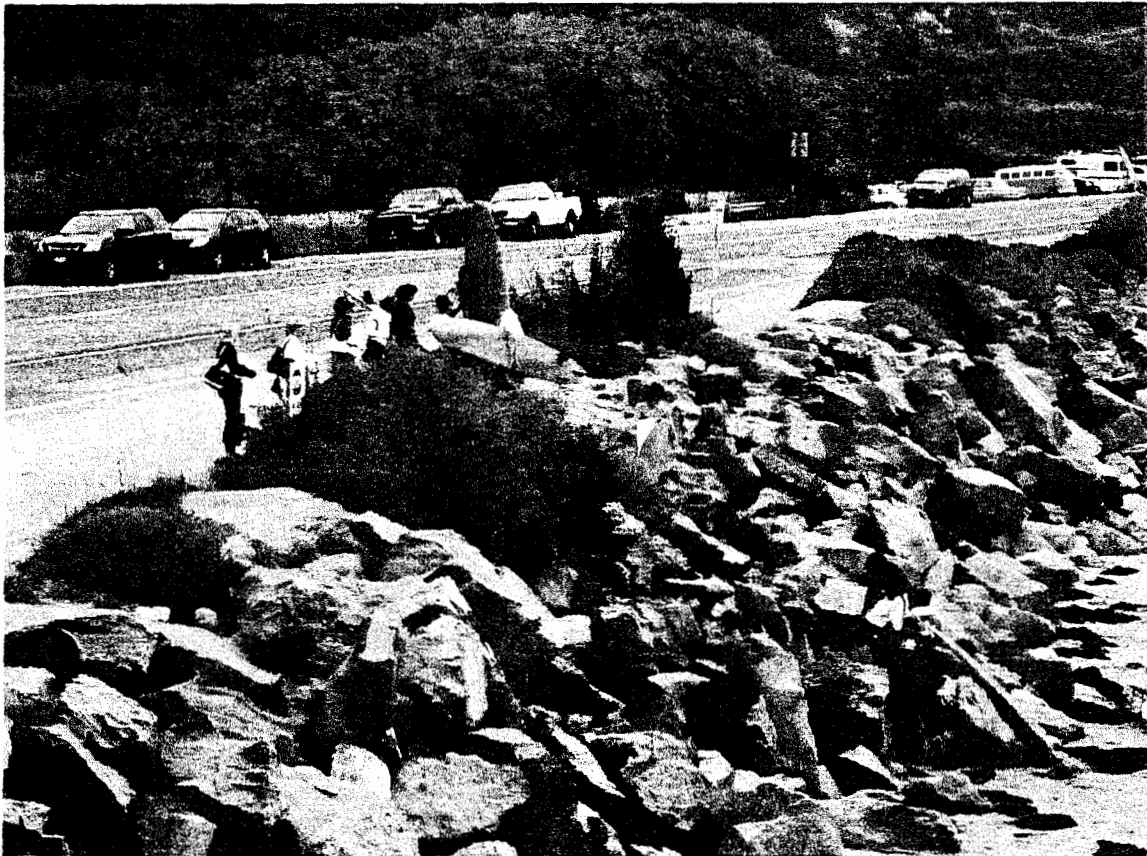
**Summer 2002 ~ March 2004**

Exhibit 22  
CCC-04-CD-04 (FBHOA)

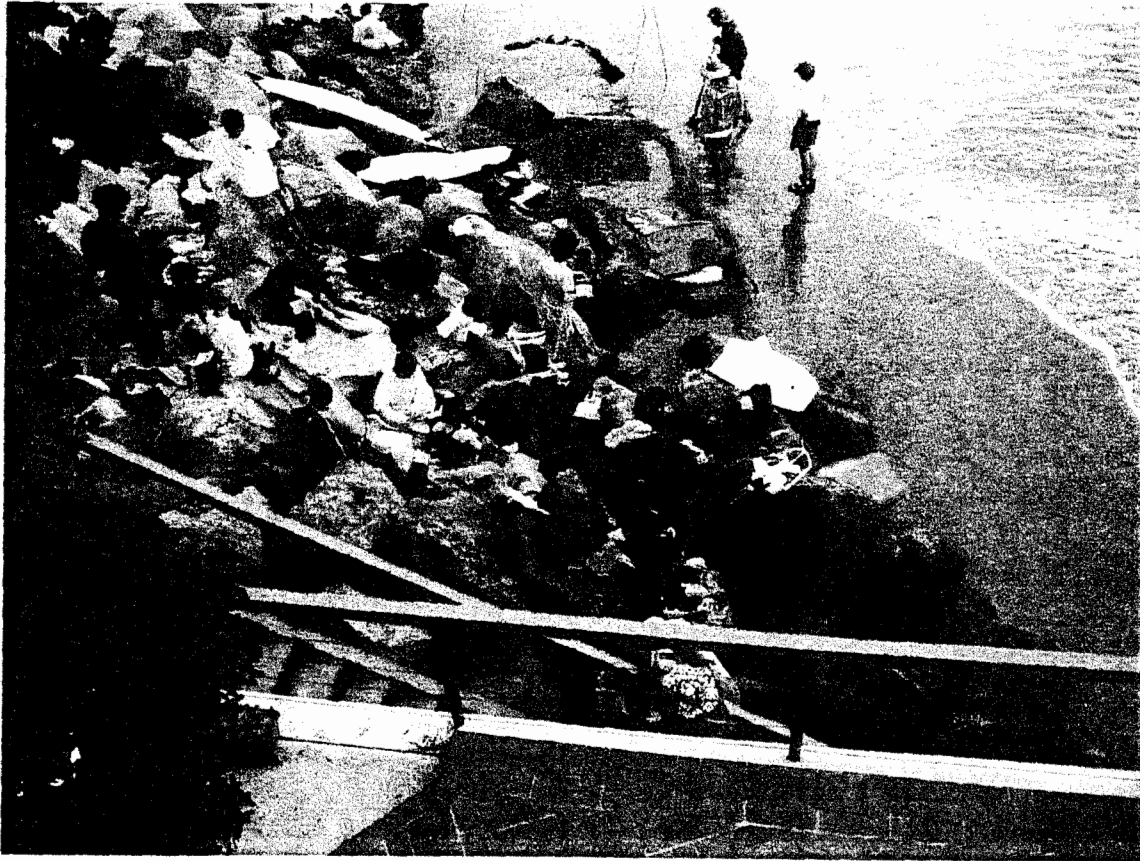
Page 35 of 58



**#1 Surfschool setting up shop before landscaping. (08-22-02)**



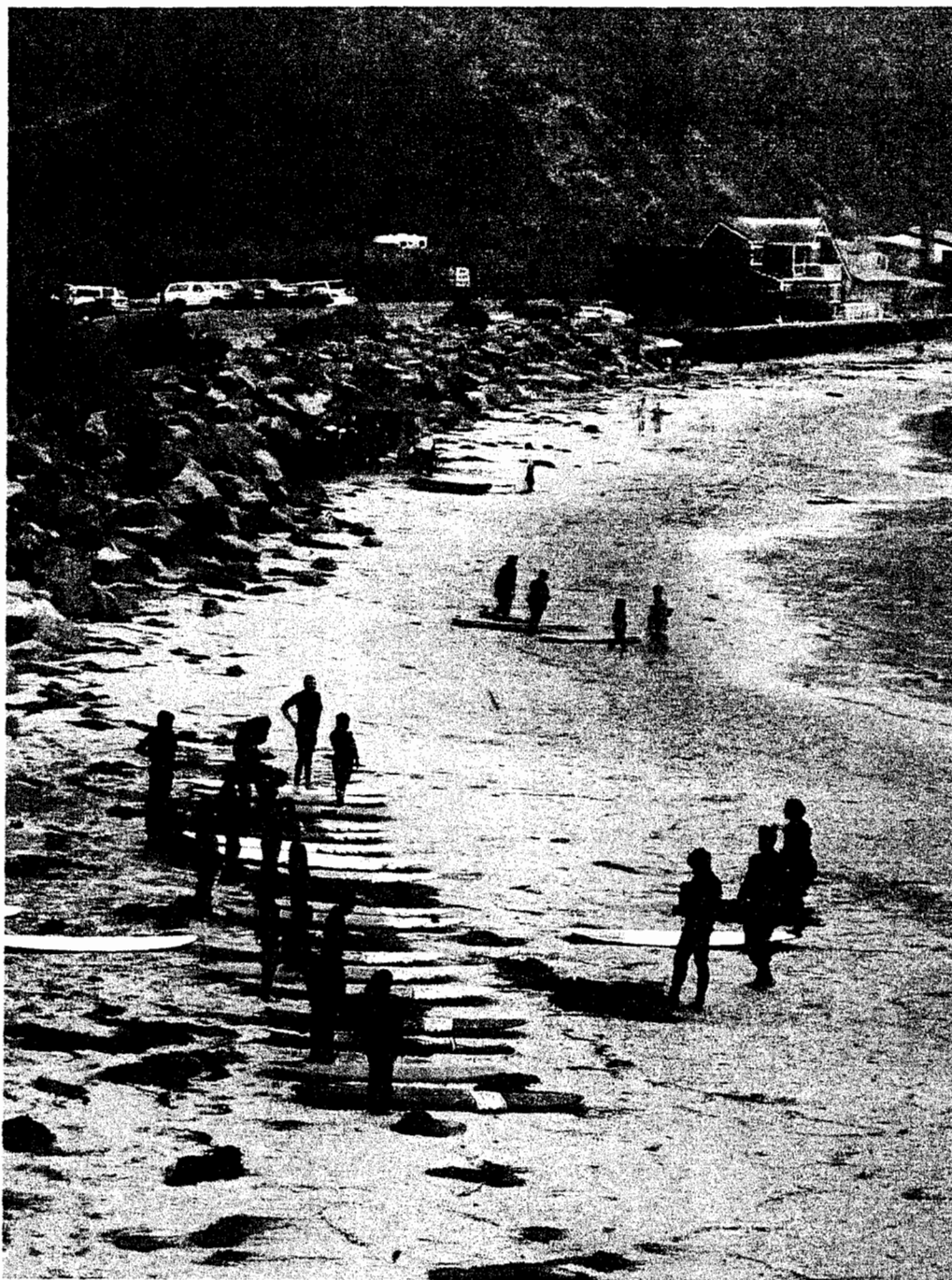
**#2 Surfschool before landscaping. (07-21-03)**



**#3 Surfschool kids on rocks. (05-31-03)**



**#4 People climbing over the rocks before landscaping. (08-22-02)**



## **#5 Surfschools. (08-21-02)**

Exhibit 22  
CCC-04-CD-04 (FBHOA)



**#6 Surfschool. (08-21-02)**



**#7 Surfboard on landscaping bed. (12-18-03)**





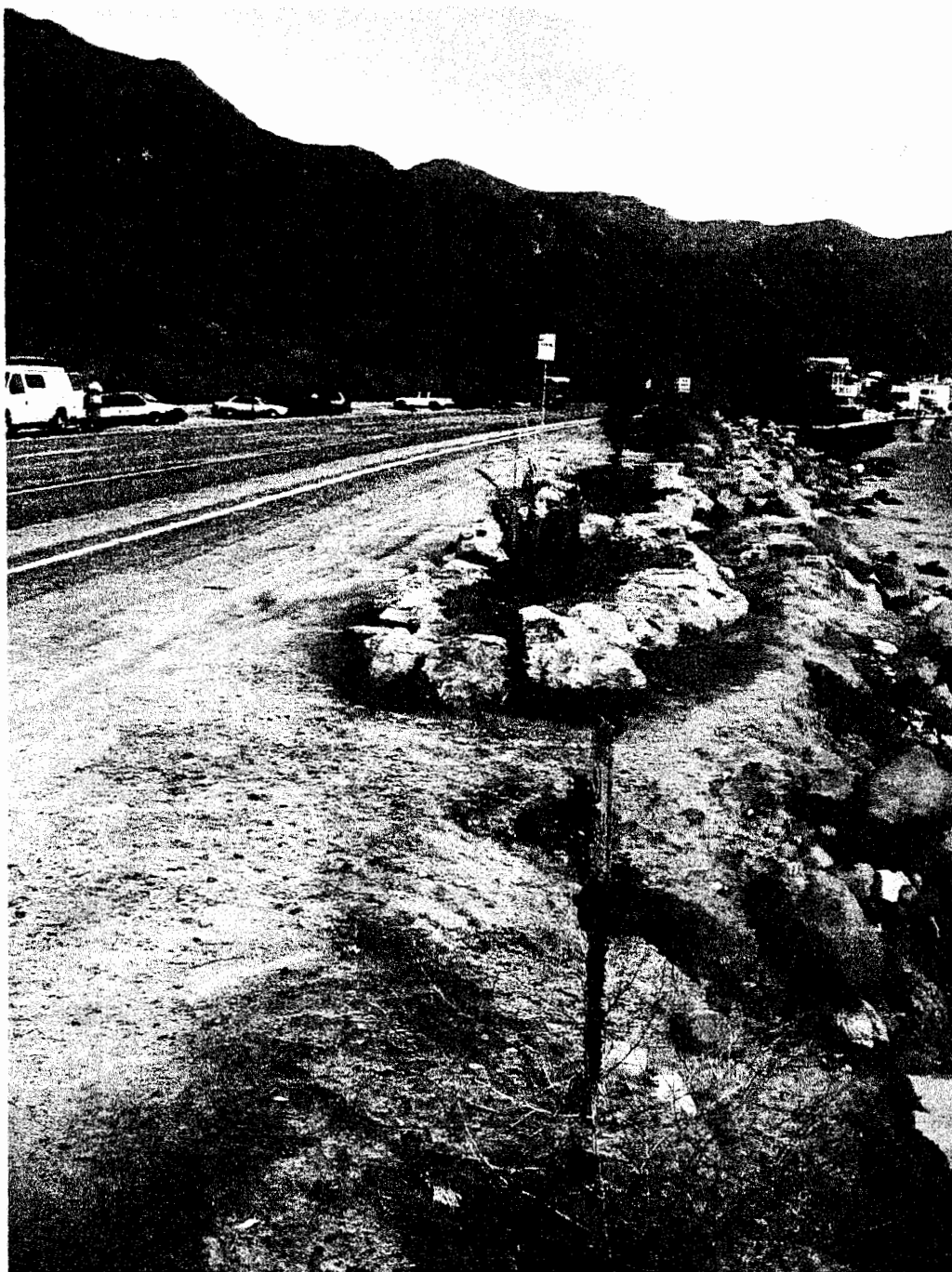
**#8 People sitting on landscaping bed. (1-22-04)**



**#9 Natural vegetation with trash removed by FBHOA. (03-05-04)**



**#10 Landscaping & sink hole. (03-05-04)**

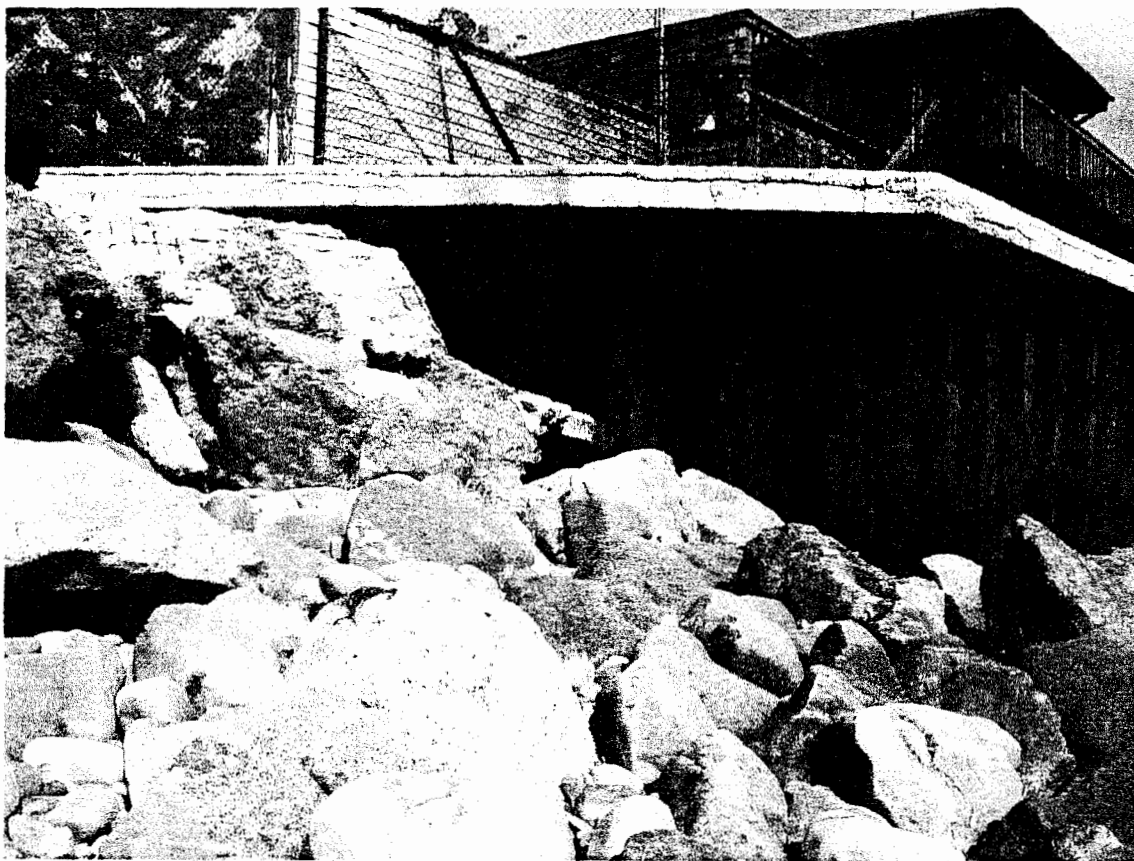


**#11 Landscaping damaged by public. (03-05-04)**

Exhibit 22  
CCC-04-CD-04 (FBHOA)



**#12 Temporary plastic fence & accessway. (03-05-04)**



**#13 "Stairs", rocks, drainage pipe. (03-05-04)**

# **NOTICE**

## **THIS IS NOT PUBLIC PROPERTY.**

IT IS OWNED BY THE FAMILIES OF THE FARIA BEACH COLONY

**WE APPRECIATE YOUR COOPERATION  
IN OBEYING THE RESTRICTIONS.**

**IT IS A MISDEMEANOR TO OPERATE  
ANY COMMERCIAL BUSINESS,**

INCLUDING BUT NOT LIMITED TO, SURF SCHOOLS, CAMPS,  
RECREATIONAL/OUTDOOR SPORTING EVENTS, INCLUDING  
SURF CONTESTS. VENTURA COUNTY COASTAL  
ZONING ORDINANCE DIV. 8, CH. 1.1, ART. 3, 4, 13

**OPERATION OF ANY SUCH  
COMMERCIAL BUSINESS IS ALSO  
TRESPASSING,**

TRESPASSERS MAY BE SUBJECT TO CRIMINAL AND/OR  
CIVIL PROSECUTION AND RELATED PENALTIES AND DAMAGES.

**NO JET SKIS-NO FIRES**

**KEEP DOGS ON A LEASH**

**PLEASE TAKE YOUR GARBAGE  
WITH YOU. WE DO NOT HAVE  
REFUSE COLLECTION SERVICE**

FARIA BEACH HOMEOWNERS ASSOCIATION  
RIGHT TO PASS BY PERMISSION, AND SUBJECT TO  
CONTROL, OF OWNER: CA CIVIL CODE 1008

**#13 Civil Code § 1008 sign.**

Exhibit 22  
CCC-04-CD-04 (FBHOA)

Page 49 of 58





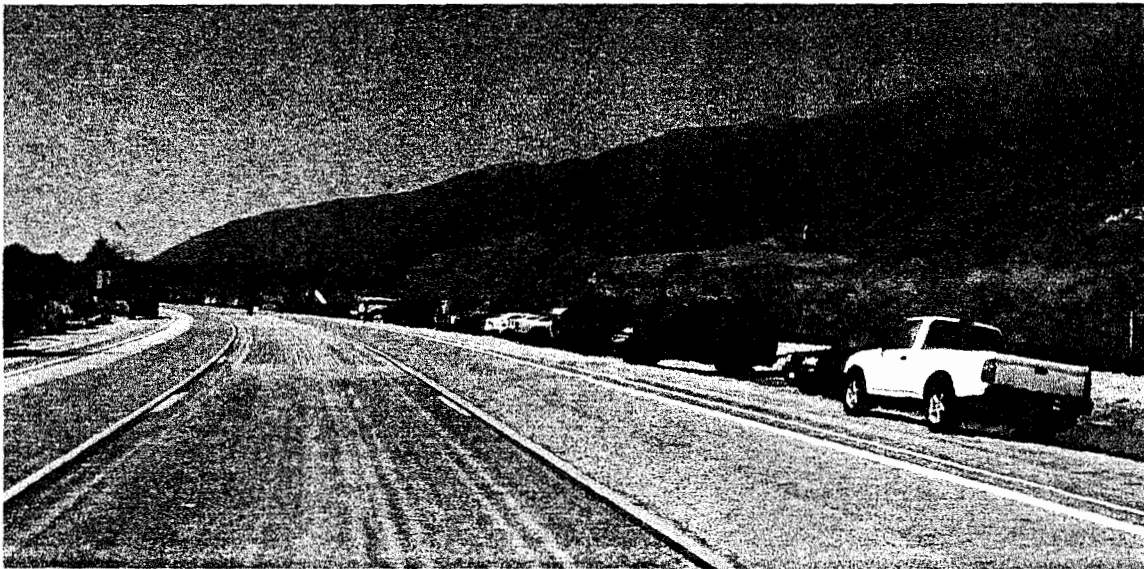
**#14 Civil Code § 1008 sign (beach side).**



**#15 County health warning.**



**#16 Parking on railroad right-of-way. (03-05-04)**



**#17 Parking on bike path. (03-05-04)**

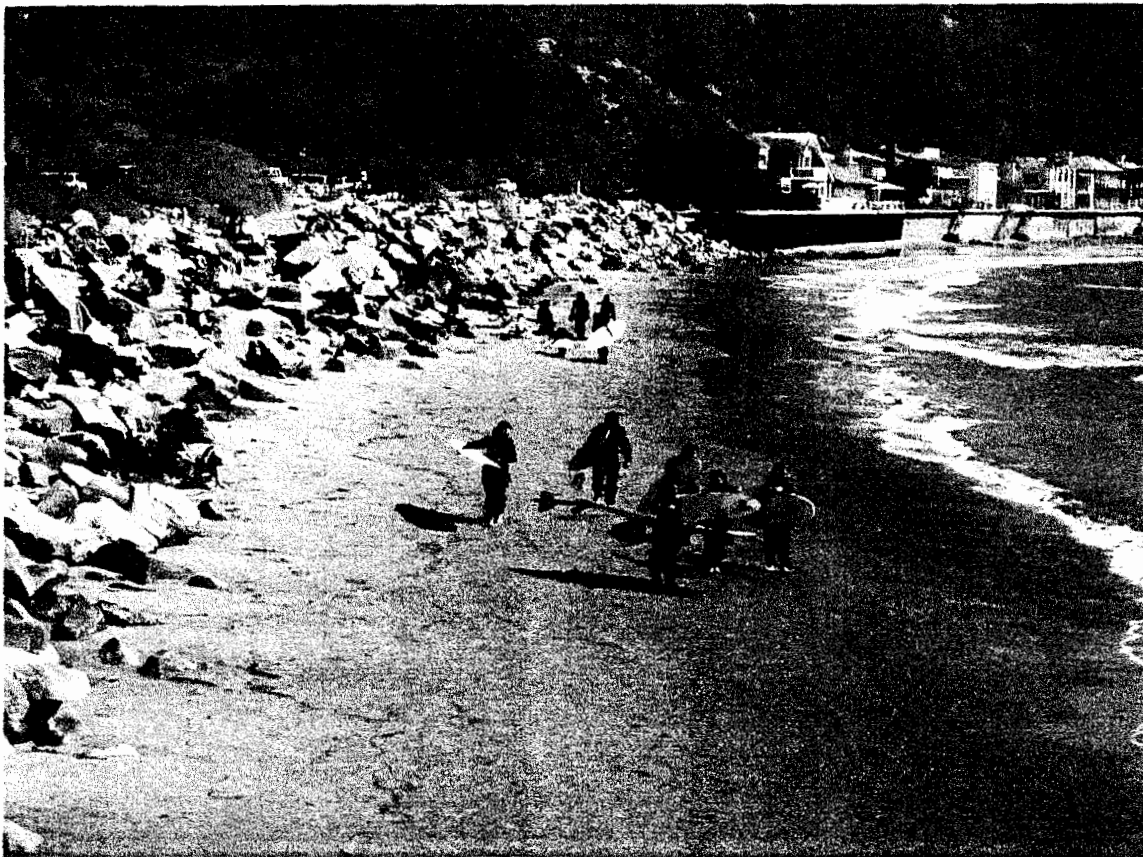


**#18 Accessing the beach. (03-05-04)**



**#19 Accessing the beach. (03-05-04)**





**#20 Surfers on the beach. (03-05-05)**





**#21 Setting up camp. (03-05-04)**



**#22 Illegally parked surfers accessing the beach. (03-07-04)**

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



February 5, 2004

Mr. Christopher Stevens, Planning Director  
Resources Mgt. Agency, Planning Division, Ventura County  
800 S. Victoria Avenue, L#1740  
Ventura, CA 93009

Dear Mr. Stevens,

Thank you for your February 3, 2004 voicemail message responding to my questions as to Ventura County's position on enforcing unpermitted development located at the Mondo's Cove area in Faria Beach and whether Ventura County had granted any permits or exemptions for the unpermitted development. This letter confirms that you received our January 20, 2004 letter regarding violation No. V-4-03-028 and also confirms that in the February 3, 2004 voicemail message to me, you stated that the County declines to take enforcement action regarding the development at Mondo's Cove.

You also stated that the County did not grant any permits or exemptions for, or take any other action whatsoever regarding the unpermitted development at Mondo's Cove and that the County was not aware that any work had commenced. In addition, you stated that the County reviewed the development after-the fact at the suggestion of a Ventura County Supervisor. You indicated that after the County review, you did not find anything in the Coastal Zoning Ordinance or the Local Coastal Plan (LCP) that would suggest the development undertaken was a violation. Commission staff has reviewed the County of Ventura's LCP and cannot find any policies within the LCP that would exempt such development from the permitting process. It does appear that such development requires permits under the County's LCP. We do not know what development had occurred at the time of the County's review. Development has been continuing and placement of new fences, boulders, signs, and landscaping occurred as recently as January 30, 2004.

The unpermitted development at Mondo's Cove includes placement of boulders ranging in size between one to five feet in diameter on and above the existing rock revetment, placement of organic mulch, topsoil, and landscaping (including non-native and possibly invasive plants and trees) along the road shoulder on top of the revetment parallel to PCH, at least two plastic drainage pipes in and through the revetment, the placement of "private property" and security signs on the revetment above the beach, and fencing. These activities are considered development as defined by Section 30106 of the Coastal Act and Section 8172-1 of the Ventura County Coastal Zoning Ordinance (the implementation portion of the County's LCP).

Exhibit 23  
CCC-04-CD-04 (FBHOA)

Section 8174-5 of the County's Coastal Zoning Ordinance lists certain types of development that are exempt from the permit process. The placement of boulders, landscaping, soil, fencing, drainage structures, and signs are not types of development found in this section.

Section 8174-6, classifies fences or walls 6' feet in height or less (except such walls or fences that may block public access to the beach), irrigation lines, and grading less than 50 cubic yards as "Minor Development". However, minor development under Section 8174-6 does not include development that is: 1) on or in a beach, tidelands, edge of coastal bluff, riparian area or within 100 feet of such area; 2) on lots between the mean high tide line and the first public road parallel to the sea (or within 300 feet of the mean high tide line where the road is not parallel to the sea); and 3) on lots immediately adjacent to the inland extent of any beach. Even if the County believes that "minor development" does not require a permit, the unpermitted development is located between the mean high tide line and first public road, adjacent to the beach, within 100 feet of tidelands, and does block public access to the beach. Therefore, you could not consider the unpermitted development as "minor development".

In addition, Section 8174-4, Permitted Uses By Zone, requires a Zoning Clearance for grading of less than 50 cubic yards, a Planned Development Permit for grading 50 cubic yards or more, a Planned Development Permit for the maintenance of shoreline protective devices (see also, Section 8175-5.12 & 8174-8); and a Planned Development Permit for the placement of signs (see also Section 8175-5.13). The unpermitted development included several cubic yards of grading (topsoil and mulch spread over the area above the existing rock revetment and road shoulder), placement of new rock on and above the existing rock revetment (shoreline protective device), and placement of several private property signs on the rock revetment.

Therefore, for the above reasons, it is Commission staff's position that the LCP does not authorize the development located at Mondo's cove to proceed without a coastal development permit from the County of Ventura. Pursuant to Section 30809(a)(2), the Commission will take action to enforce the requirements of the Ventura County Local Coastal Program.

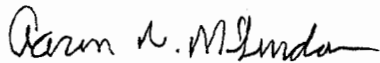
I would also like to note that the development appears to be located in the buffer area of an Environmentally Sensitive Habitat Area (see figure 1, Environmentally Sensitive Habitat Areas of the North Coast, pg. 29 of the Ventura County General Plan, Area Plan for the Coastal Zone (LUP), and also may impact access to and recreation on a popular beach (see pages 34-41 of the LUP). Therefore, we are concerned that the unpermitted development has the potential to cause significant damage to coastal resources.

Please let me know as soon as possible if you disagree with the above-interpretation of the Ventura County LCP as it relates to the subject unpermitted development. I look

Christopher Stevens  
February 5, 2004  
Page 3 of 3

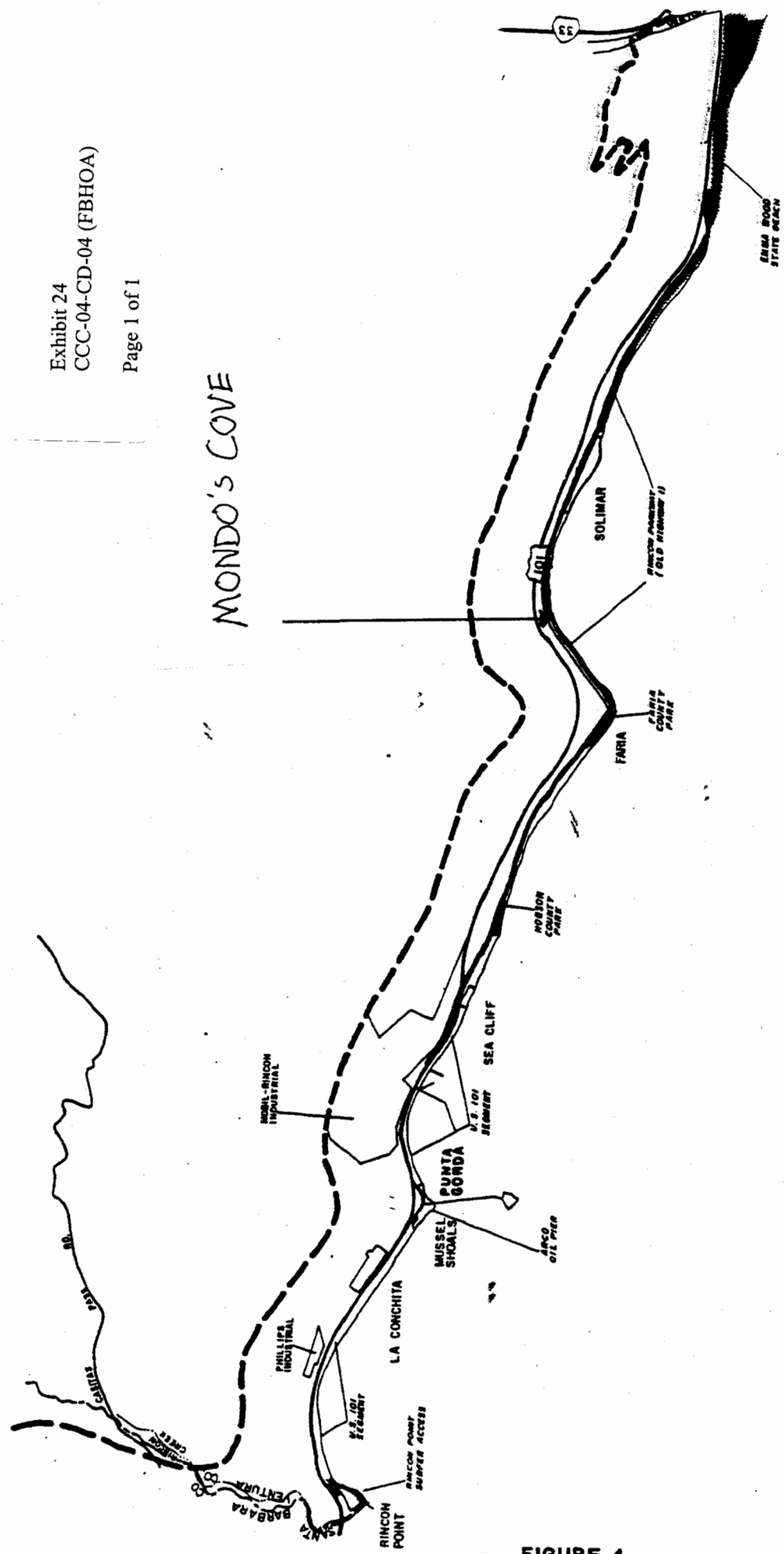
forward to working with the County to resolve these issues. Please do not hesitate to call me at (415) 904-5220.

Sincerely,



Aaron N. McLendon  
Statewide Enforcement Analyst

cc: Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Steve Hudson, Southern California Enforcement Supervisor  
Tom Sinclair, South Central Coast District Enforcement Officer



MONDO'S COVE

FIGURE 4

# RECREATIONAL AREAS ON THE NORTH COAST

## COASTAL PLAN

county of ventura  
resource management agency  
planning division

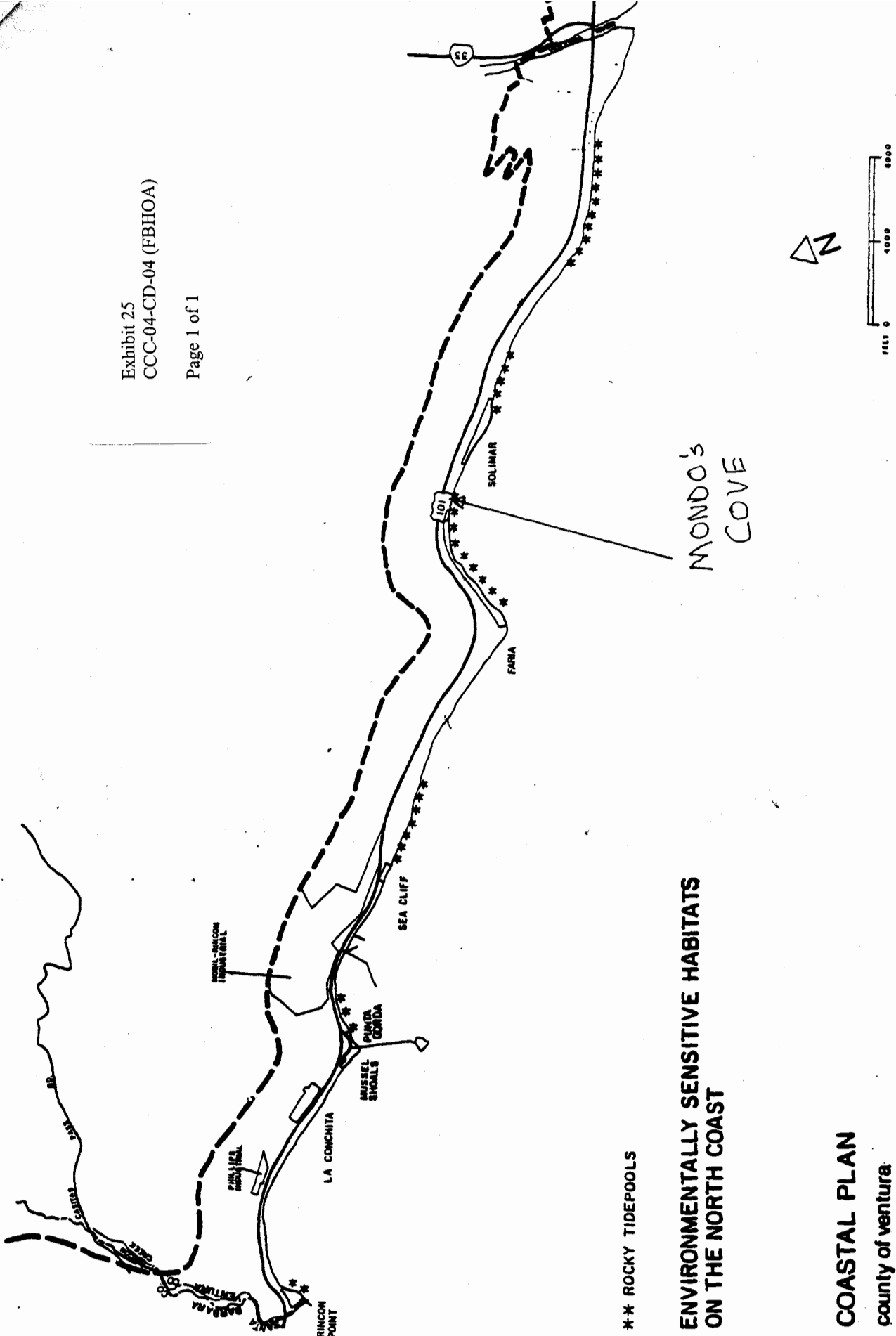
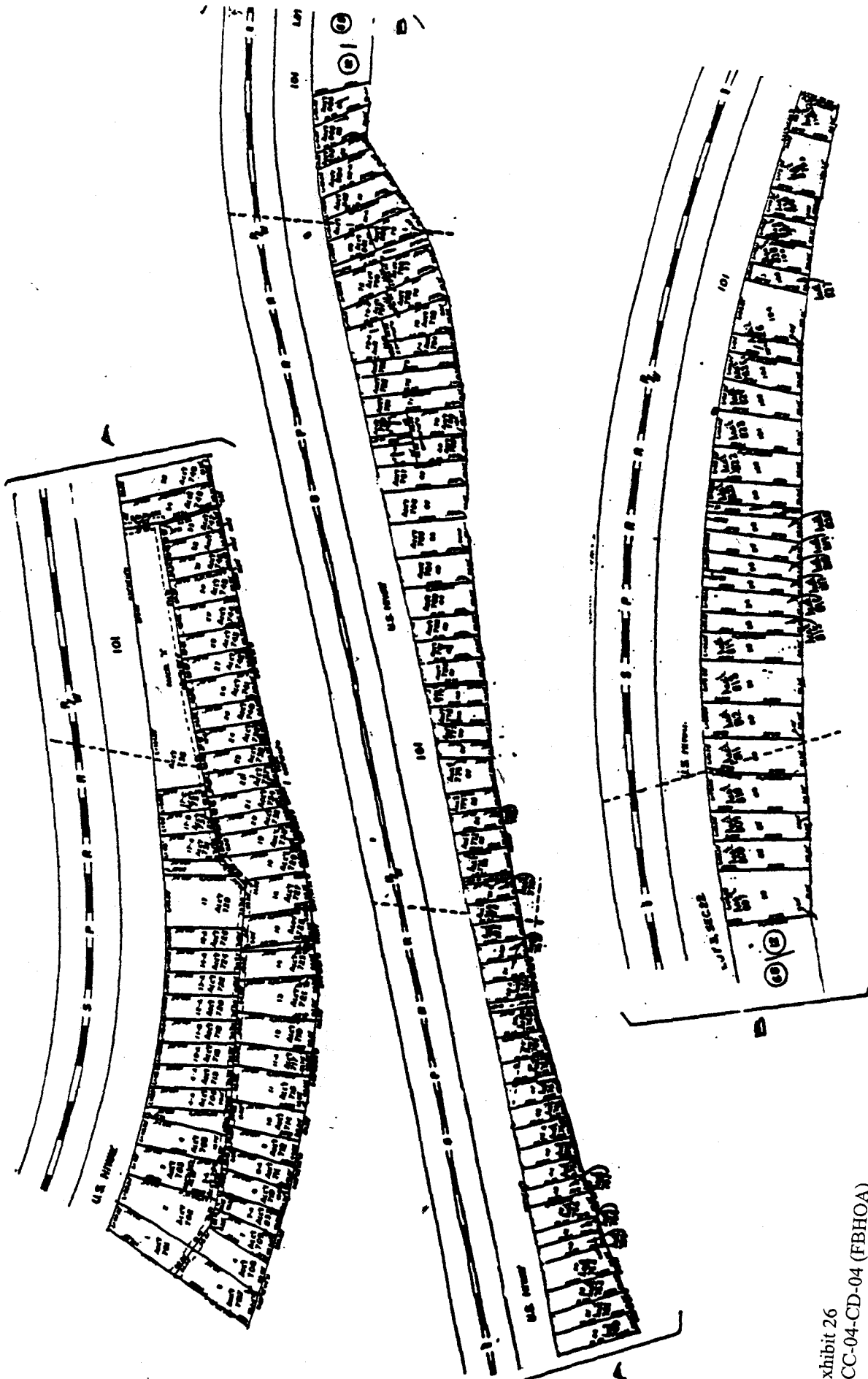


FIGURE 1





**FARIA  
RESIDENTIAL COMMUNITY**

Exhibit 26  
CCC-04-CD-04 (FBHOA)

Page 1 of 1

**FIGURE 15**